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ABSTRACT

Established by the Arizona Legislature in 1953, the Arizona Commission on American Indian Affairs serves as the official link between the tribal autonomies and the State government, its legislature, and elected officials. Its primary purpose has been to study conditions among Indians residing within the State. Among the commission's goals are: (1) improving communications, understanding, and working relationships between all concerned; (2) promoting understanding and fellowship in the area of Indian affairs; and (3) cooperating and assisting tribes in developing self-determination. The commission sponsored the first Arizona Indian Water Rights Conference to discuss water rights which affect Indian reservations. Attending the conference were tribal leaders, State and Federal government officials, and leaders of State and national Indian organizations. Tribal leaders from the Ak-Chin, Camp Verde, Colorado River Tribes, Fort McDowell, Navajo, Hualapai, Kaibab-Paiute, Fort Mohave, Salt River, Fort Yuma, and Gila River Indian Reservations discussed their status on water rights. Legislation and other areas of concern on the national level which affect Arizona tribes were also discussed. This report presents the discussions held at the conference. (NQ)

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REPORT ON: ARIZONA INDIAN WATER RIGHTS CONFERENCE

AUGUST 1973

ED103146

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Arizona Commission of Indian Affairs

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FOREWORD

The Arizona Commission of Indian Affairs was established by the Arizona Legislature in 1953. The primary purpose of the Commission has been to study conditions among Indians residing within the State.

The Commission serves as the official link between the unique tribal autonomies and the State government, its legislature and elected officials.

A very important area of our responsibility has been to improve communications, understanding and working relationships between all concerned and we have diligently been working to this extent.

Another of our goals, is to promote understanding and fellowship in the area of Indian affairs as well as cooperate and assist tribes in developing self-determination.

We hope the information contained in this report will prove to be encouraging and helpful to bring about better understanding of Indian Water Rights.

The Commission greatly appreciates the assistance of the participants for their cooperation in the first annual Indian Town Hall held on the Fort Apache Indian Reservation.

Sincerely yours,

West Anderson
WEST ANDERSON - Chairman

Clinton M. Pattea
CLINTON M. PATTEA, Executive
Secretary

WA:CMP/dd
January 28, 1974

COMMISSION MEMBERSHIP

INDIAN MEMBERS

WEST ANDERSON (CHAIRMAN)--------------------APACHE

DANIEL PEACHES (VICE-CHAIRMAN)--------------------NAVAJO

LEONA KAKAR--------------------PAPAGO

ANTONE GONZALES--------------------MOHAVE

LANCE GREY--------------------PIMA

NON-INDIAN MEMBERS AT LARGE

WILLIAM SMITH--------------------TUCSON

JOHN SMART--------------------PRESCOTT

EX-OFFICIO MEMBERS

JACK WILLIAMS--------------------GOVERNOR

GARY NELSON--------------------ATTORNEY GENERAL

WELDON SHOFSTALL--------------------SUPT. OF PUBLIC INSTRUCTION

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TONY MACHUKAY--------------------FIELD COORDINATOR

DIANE DANKERL--------------------SECRETARY

ALBERTA ORTIZ--------------------CLERK-STENO

ARIZONA COMMISSION OF INDIAN AFFAIRS
1645 W. Jefferson, Rm. 433, Phoenix
85007

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ARIZONA COMMISSION OF INDIAN AFFAIRS

AGENDA

"ARIZONA INDIAN WATER RIGHTS CONFERENCE"

PLACE: SUNRISE PARK HOTEL
WHITE MOUNTAIN APACHE RESERVATION

AUGUST 21st (Tuesday)	REGISTRATION 6:00 - 9:00 P.M. Hotel Lobby
	Welcoming Hostess: Leona Kakar, Commission Member
AUGUST 22nd (Wednesday)	
9:00 A.M.	Meeting called to order - Chairman West Anderson
	Welcoming Remarks - Mr. Fred Banashley, Ft. Apache Chrm.
9:10	Opening Remarks - The Honorable Jack Williams, Governor
9:30	Brief Remarks - Inter-Tribal President Don Antone, Sr.
	(Moderator - Clinton Pattea, Commission Executive Sec.)
9:40 - 10:40	1st Panel:
	Status on Water Rights - Tribal Chairmen
	Ak-Chin - Mr. Wilbert Carlyle
	Camp Verde - Mr. Aaron Russell
	Cocopah - Mr. Robert Barley
	Colorado River - Mr. Antone Gonzales
	Fort Apache - Mr. Fred Banashley
	Fort McDowell - Mr. Gilbert Jones
	Gila River - Mr. Alexander Lewis
	Hopi - Mr. Clarence Hamilton
10:40 - 11:40	2nd Panel:
	Havasupai - Mr. Oscar Paya
	Hualapai - Mr. Sterling Mahone
	Kaibab-Paiute - Mr. Bill Tom
	Navajo - Mr. Peter MacDonald
	Papago - Mr. Augustine Lopez
	Salt River - Mr. Paul Smith
	San Carlos - Mr. Marvin Mull
	Quechan - Mr. Elmer Savilla
	(Moderator - Daniel Peaches, Commission Vice-Chairman)
12:00 - 1:00 P.M.	Luncheon Speaker - Mr. George Vlassis from Brown, Vlassis and Bain
	(Moderator - Antone Gonzales, Commission Member)
1:00 - 1:30 P.M.	Mr. Wes Steiner, State Water Commissioner
1:30 - 2:00	Mr. Leon Cook, President, National Congress of American Indians (Washington, D. C.)
2:00 - 2:30	Mr. Roger Ernst, Director, Central Arizona Conservation District
2:30 - 3:00	Mr. Harold Ranquist, U. S. Solicitor's Office (Washington, D. C.)

AUGUST 22nd CONTINUATION

3:00 - 3:30 P.M.	Mr. Clifford Pugh, Project Manager, U. S. Department of Reclamation
3:30 - 4:00	Mr. John Echohawk, Director, Native American Rights Fund (Boulder, Colorado)
4:00 - 4:30	Mr. Andrew Bettwy, Sr., State Land Commissioner
4:30 - 5:00	Representative Ben Hanley
5:00 - 5:30	Mr. Jim Goff, Ass't. Commissioner for Environmental Health Services - Water Quality (State Health Dept.)
5:30 - 6:00 P.M.	Tour - Ski Lift Area
7:00 - 9:00 P.M.	Banquet Moderator - Chairman West Anderson
	White Mountain Apache Crown Dancers
	Banquet Speakers: Dr. Richard Kassander, Vice-President for Research, University of Arizona Mr. Jack Peterson, Indian Water Rights Specialist (Boise, Idaho)

AUGUST 23rd (Thursday)

8:00 A.M.	Brief opening remarks - Chairman West Anderson
8:15 - 11:40 A.M.	Break into Panel Discussions (Panel designation sheet in conference packet)

		(1)	(2)	(3)
	Panel Chairmen:	Bill Alcaida	Dan Peaches	Ronnie Lupe
12:00 1:30	" Recorder:	Tony Machukay	Andy Bettwy	Leon Beene

12:00 - 1:30 P.M.	(Moderator - Lance Grey, Commission Member) Luncheon Speaker: Senator Arthur Hubbard
1:30 - 3:30	(Moderator - Bill Smith, Commission Member) General Session - Final analysis and recommendations State Recap: Mr. Emory Sekaquaptewa Federal " : Mr. Bill Farrison
3:30 P.M.	Conference Adjournment

CHAIRMAN WEST ANDERSON:

Honorable Jack Williams, Governor of the State of Arizona, tribal leaders, officials of state and federal governments, leaders of state and national Indian organizations and guests.

Welcome to the first Arizona Indian Water Rights Conference. I would like to briefly go back two years ago, and explain how the Conference came about. I am sure you have heard of the Arizona Town Hall meeting, which is conducted annually. The purpose of Arizona Town Hall is to bring together citizens of all walks of life in Arizona to discuss certain topics. From these meetings, recommendations are made, published and distributed on a very broad basis, thereby publicizing the topics discussed.

One recommendation which came about, was made two years ago: that Arizona should have a similar type of meeting for the Indian tribes of this State. With this in mind, the Arizona Commission of Indian Affairs took on the task of conducting a survey to ascertain the wishes and views of the Arizona tribes. After many months of discussion among the Commission members, it was determined that we should sponsor the first such Conference. The topic selected was Water Rights. The majority of the tribes were very concerned about their water rights, so, the Commission agreed that this would be the topic for the Conference.

During the month of June, I sent invitations to a number of selected individuals, the response from these invitations was so overwhelming that accommodations for this size of conference was inadequate, therefore, some of the participants had to be at other locations. We want to apologize for the inconvenience.

The main purpose of this Conference is to bring people together from within the State of Arizona, particularly our Arizona tribes, to discuss with you their main concerns on water rights which affect their reservations. There are areas of concern on the national level which will affect tribes in this State.

It is the Commission's hope, that this conference will develop a dialogue of basic understanding and fellowship, and that we should promote, establish and maintain this type of dialogue among all citizens in the State of Arizona.

FRED BANASHLEY - Welcoming Remarks:

I would like to welcome each and everyone of you and the tribes that have sent their representatives from the reservations of Arizona, non-Indians, and Governor Williams as our special guest. It is a great honor to have Governor Jack Williams here. On behalf of the White Mountain Apache Tribe and the Tribal Council, welcome. We are here as Indians; we have problems and in our discussions today, I hope we come up with good decisions. Let's put our heads together and see what we can accomplish in the next two days. Each one of our tribes has water problems of some kind and would like to know which way we are going. I think that is why we are here today. We have Governor Jack Williams here and I think he is very interested in Indians and in the tribes of Arizona; (his help is needed) to help us establish ourselves as citizens of Arizona; as the first American citizens, we Indians should come first not last. We can learn a lot from you non-Indians and professionals, but we need your cooperation and help.

I appreciate standing and speaking before you today; I don't know everything, but I would like to learn from other people, too. Thank you very much.

THE HONORABLE JACK WILLIAMS, GOVERNOR OF ARIZONA - Opening Remarks:

Chairman West Anderson and members of the Commission; Clinton Pattea and members of the Commission staff; tribal chairmen, former Chairman Bill Alcaida; Don Antone, President of the Inter-Tribal Council; honored guests; and participants in the first annual Indian Town Hall meeting.

This is a great day in the history of Arizona---the first Indian Town Hall meeting. I congratulate Chairman West Anderson and the Commission for their initiative in sponsoring this occasion.

I would hope that the success of this Town Hall will encourage the Commission of Indian Affairs to make this an annual event. It is most fitting that Arizona be the leader in Indian affairs and this Town Hall will be an important step in establishing and maintaining that position. The relationship of the Indian community and non-Indian community is essential to the orderly and progressive growth of our State.

The State of Arizona has never before enjoyed such excellent relations with its Indian citizens as it does today. The relations are based on a mutual confidence between state and tribal leaders.

I understand that there is some concern in the Indian community that the Central Arizona Project will endanger Indian water rights, particularly those along the Colorado River. I wish to assure you that this is not true---there is no intent, by the State of Arizona, to jeopardize the water rights of any Indian tribe through the construction of the Central Arizona Project. To the contrary, during your deliberations I would respectfully suggest you ask Mr. Wes Steiner, State Director of Arizona Water Commission, as to his feelings and thinking regarding this matter. You will find him forth-right and knowledgeable in his statements.

In fiscal year 1973, I directed the Four Corners Regional Commission to make a technical assistance grant to the Fort Mohave Tribe, to prepare an application to the Bureau of Reclamation for a small reclamation project loan. This project entails over ten thousand acres of land. The water to irrigate this land will come from the Colorado River. This is prima facie evidence, I think, of our interest in securing the water rights of our Indian citizens. It is further my understanding that the Colorado River Tribe upon learning of the Bureau of Reclamation small loan project for the preparation of farm land for irrigation purposes has initiated discussion on the tribal council level to ascertain the interest of the tribe in this matter. I will lend my personal support and assistance to the Colorado River Tribe if they do decide to make an application to the Bureau of Reclamation for a small reclamation project loan. If there is any tribe that is interested in this particular program and feel I can be of help to them, please contact my office and assistance will be immediately forthcoming.

I note on the agenda that Mr. Andrew Bettwy, Sr., State Land Commissioner will address you this afternoon. As you know Mr. Bettwy is charged with the responsibility of water rights within the State of Arizona excepting the Colorado River. Mr. Bettwy is as fully protective of the Indian water rights as he is of the non-Indian. His responsibilities are to the citizens of Arizona and they extend to each of you as well as to each and every other citizen of this great state. You will find Mr. Bettwy most responsive and enthusiastic about participating in this dynamic Town Hall meeting.

On September 21, 1972, there took place a historic event---the Arizona State Indian Seminar held at the Scottsdale Community College, Salt River Reservation. It was the first time there had ever been a meeting of the elected leaders of the Arizona Indian Tribes and the State's non-Indian leadership to discuss problems of mutual interest and to promote greater understanding. Invitations to this meeting were sent by Donald Antone, William C. Jacquin, President of the Arizona State Senate, Tim Barrows, Speaker of the Arizona House of Representatives, and myself.

So many times seminars, conferences and town halls create many intangible benefits that result in great progress---but are hard to define, isolate, and point to as a concrete accomplishment. The Arizona State Indian Seminar did have more than its fair share of intangible benefits. But it also had one very concrete tangible benefit. A number of committees was appointed to conduct studies of various problems. One of these was the taxation and services to reservation Indians committee. Paul Smith, President of the Salt River Pima-Maricopa Community Council, was appointed chairman of this committee. Mr. Smith designated Mrs. Veronica Murdock, Secretary of the Inter-Tribal Council; State Senator Dave Kret; Mr. Neal Trasente, Director Sales and Use Tax Division, State Tax Commission; and Mr. Tom Woods, Bureau of Indian Affairs, to serve on the sub-committee responsible for preparing a report on the services and expenditures provided to Arizona reservation Indians. Mr. Woods served as chairman of the sub-committee and invited Mr. Clinton Pattea, Executive Secretary, Arizona Commission of Indian Affairs; Mr. Lind Ford, Sales and Use Tax Division, State Tax Commission; Mr. Stephen Jenkins, Office of Economic Planning and Development; and Dr. Delmar L. Beene, Research Division, Arizona Legislative Council to serve as consultznts to the sub-committee and to help in the collection and analysis of the data. Mr. Woods, Mr. Jenkins, and Dr. Beene were entrusted with the task of writing the final report. In addition to these consultants the late Senator Harold Giss was also appointed. Those of you who knew the late Senator Giss knew that he was a friend of all the citizens of Arizona, Indian and non-Indian alike, and is not only missed at this town hall but will be missed for many more to come. I commend this sub-committee---it has come up with an outstanding document in a field that was often vague and confusing to many state legislators and tribal leaders. Today we have a document that is an excellent base on from which to start a clarification of the taxation services which are paid to, and rendered from, Arizona reservation Indians. On May 21, 1973, Chairman Paul Smith began the distribution of this sub-committee report and it is my understanding that copies of this report may be obtained by writing to Mr. Tom Woods, Sub-Committee Chairman, Bureau of Indian Affairs. I believe there is a human interest story of the cooperation, amongst various agencies, that took place in the printing of this report and I would like to relate it to you.

"The Office of Economic Planning and Development typed the rough drafts and final copy. The typed copy was then sent to the Arizona Legislative Council where offset printing masters were made and 600 copies of the study were printed and collated on paper supplied by the Bureau of Indian Affairs. With technical assistance from the Arizona Commission of Indian Affairs, the Bureau of Indian Affairs designed and printed the covers. The collated copies were then returned to the Office of Economic Planning and Development where two young ladies from the Bureau of Indian Affairs bound them under the supervision of a staff member of the Office of Economic Planning and Development. The completed copies were then forwarded to the Bureau of Indian Affairs for distribution." What wonders mutual understanding and cooperation can accomplish.

I believe many were amazed to learn that in fiscal year 1972 Arizona Indians paid nearly $10,000,000 in direct taxes to the State---that State expenditures for reservation Indians amounted to more than $11,000,000---that the tribal governments spent $20,000,000 for services to Arizona reservations. These are hard facts which our decision makers must have to make intelligent judgements.

It was a difficult subject and it was researched with imagination, ambition, ingenuity and a deep desire to assemble facts that told a story regardless of where the chips fell. It is not a document of perfection but it is certainly a document upon which state leadership and tribal leadership can more readily reach mutually satisfactory solutions as regards this problem.

I hope this Town Hall meeting will lead to the development of such data to help clarify the position of Indian water rights. Certainly the Arizona Commission of Indian Affairs was courageous in the subject which they chose for this town hall. Water Rights, Indian and non-Indian, are a delicate subject. Here in Arizona we have the fullest understanding of the value of water. "As long as the grasses grow and the rivers run" is a familiar quotation to our forefathers, both Indian and non-Indian alike. In Arizona there is a doctrine of the non-separation of land and water. There will certainly be no grass to grow if there are no rivers to run.

If I have one piece of advice to give to you, the participants in this first annual Town Hall, it would be that you must be open in your remarks as regards Indian water rights. There must be nothing left unsaid, let's bring forth every question---let's examine every facet of the problem---let's discuss every possible solution to each problem. Let no one fail to ask a question because it might seem foolish---let no one laugh at an answer to a question because it might seem foolish. Remember that foolish questions are far easier to correct than foolish mistakes.

What you will do here in the next two days will have influence not only in Arizona but will have influence throughout all of America---your discussions will not only have influence in the future of Indian water rights in Arizona but will influence the future of Indian water rights wherever they exist in our great land.

Today, you are participating in one of the great traditions of democracy, the public forum, the town hall. For each of us taking part in this town hall, our only rank or title is that of "participant." Achievements, titles, marks of financial success, are left at the door of this hall. In here we are all equal, striving for the communication of facts and information upon which dedicated people may make reasonable and prudent decisions. This is the answer of Arizona to confrontation. This is peaceful assembly of intelligent men and women sitting down in harmony with each other to develop actual data to solve one of the most important questions and problems that faces our State---water rights. It was not so long ago I had the pleasure of attending a joint luncheon of the Inter-Tribal Council and the Commission of Indian Affairs. Your leaders at that meeting were appreciative and complimentary of the efforts of the state legislature and myself to establish a rapport with the Indian community. I was appreciative of their remarks. At this time I wish to tell you in public how much I appreciate the efforts, the achievements, the understanding, the dedication, of the tribal leadership in Arizona. I commend Chairman Anderson, and each member of the Commission of Indian Affairs and each of the staff who is dedicated to the Commission. I commend each tribal chairman and each member of each tribal council for his sacrifice, for his efforts, on behalf of their individual tribe, which have resulted in a rapport existing between our Indian communities and non-Indian communities---the quality of and the excellence of which never existed before, for Don Antone, President of the Inter-Tribal Council, I have only the highest praise.

There is no state which has shown as much respect for its environment as has been exhibited in Arizona. The truth of this statement is the quality of water which exists in Arizona. We have not polluted our streams; we have not wasted our water; we have impounded our streams with dams which have created reservoirs; we have become water conservation conscious and have installed, maintained and initiated new water conservation practices that make us a leader in the fields of water conservation throughout this great land. I can not help but think that a part of our state's water conservation practices and achievements were stimulated by the culture and heritage of our Indian people. I believe the Indian heritage and culture which is reflected in a deep respect for the gifts of God have influenced our society to demonstrate a reverent respect for the waters of our state.

Water has always played a significant role in the religion of the American Indians. There is legend that water and fire are the holy spirits that fathered mankind. The sun and water are our life blood.

May the blessing of heaven be upon these deliberations. Thank you.

DONALD ANTONE, SR., - BRIEF REMARKS:

I have just a few remarks that I would like to point out to the participants which they can keep in mind during the two days they are involved in the Water Rights problems--problems that face all of us in the State of Arizona. Governor Williams mentioned that a year ago in September, we had the first joint meeting where leaders of the State--Indian and non-Indian got together and talked about problems. Out of that meeting, there were four committees which were set up. The Governor mentioned one of them which Chairman Paul Smith chaired. There were other committees. There was an Economic Development Committee that I was appointed to chair. There was an Education Committee that was appointed and there was a Welfare Committee. The people at that meeting, felt that these were the four major problems facing us at the time. They felt that if they could get together, and discuss the problem openly, they might come up with some answers. I think this was a great start. But one thing we have not done in the past years (and some of the older tribal leaders can verify this as well as some of the older non-Indians who have been involved in tribal affairs and others)--we have never really sat down and talked about our problems openly; we have never sat down across the table and opened up to where we can try to find some answers. We have always gone to the legislature and we as Indians, had to do battle on bills which might have done harm to the Indian people. This is about the only way that we have ever confronted the state leadership. We have never found an answer to that. I think we finally have started. Some answers have been found and some are still to be found.

In communications, the Governor has set up a committee which he has asked me to chair, comprised of non-Indians and Indians. This committee will set up policies for better communication between Indians and non-Indians and better working relationships. We had our first meeting three weeks ago. Our next meeting will be in the first week of September. I think this is a real good start. I think that if we can talk about our problems openly, and discuss them at length "together", I think we might come up with something. The one thing that we should all keep in mind, while we are discussing our water rights problem is that each tribe has different water concerns. Their efforts to regain their water rights are at different stages. Some of their water rights are underground, some of them have flowing streams, some of them, like my reservation, have rivers that are dry. Each tribe differs. I think that is the one thing that we have to keep in mind.

Many times our non-Indian brothers and neighbors tend to put Indian water rights as one problem, and because of that, they are sometimes quick to give you answers to the problems we face. I don't think that is the way we can solve it. The one way we can solve our problems such as water and land is by working together, by learning together, by becoming familiar with each others problems, and then by sitting down and talking about them. Only then, can you talk about them intelligently. I have attended many conferences where water rights were discussed, and I am sorry to say, that many times I have walked away from the conference without any answers. To me it was a waste of time, a waste of money. Everyone that presented a case or statement on behalf of his own tribe, office, or state, was always jealously controlling his section or whatever he was involved in and not giving fully what he really knows. Not saying how he could really help through his office or efforts with another tribe or state, or county. We always stood back and said that water rights was a real touchy subject and did not want to get involved, for fear of getting hurt. Some tribal leaders have said, "well, I am not really sure that I should tell all of my problems because I'm not sure I want to get involved; someone may take up what I am saying and use it against me in court." These are the fears that I think we have. In a way, I don't blame the tribal leaders for feeling this way because of past experiences. But I think today, we are all intelligent enough, to know, that in order to get anything done, as Fred Banashley pointed out, we must tell our problems the way they are. I think this is one way, in which we can solve the problems that we have. I hope the participants will keep this in mind during the two-days we are talking about water. The one thing we should all keep in mind, especially for non-Indians is that to the Indians, land and water is quite dear. They are closer to the water and land than any other people; mainly because of their religious background, their tradition. Many times when we talk to developers, they talk in terms of money and how much 40 acres can bring. To an Indian, when he asks himself, "I have 40 acres, what can I do with it?" he answers by saying "I could probably lease it for an income but I would never sell it. I hope to leave it to my children so that my children can have something they can call their own." This is the way Indian people talk. These are the differences. I would like for you to keep that in mind also. In closing, I would like to say that with your cooperation, I hope we will continue this type of working relationship that we started a year ago. Especially with those people who hold high offices in the state. We need to work with you. We need for you to open your doors so that we can walk right in and feel at home, --and also feel that we can trust you enough to discuss our problems at length. Tribal leaders have to recognize that the state is really not the answer; they can help in some ways, but only for some of the tribes. The answer is not just the Bureau of Indian Affairs, not just federal programming but also state programs that can be of help to Indian people. There are consultants working within the state who are available and capable of providing the type of assistance you might need to develop your land and safeguard your development; these are the things that you have to keep in mind. And I hope this conference will not end here and will continue on an annual or semi-annual basis because as I said, each tribe has their own problems and you are not going to find all the answers here today. Thank you very much.

1st PANEL - TRIBAL LEADERS (STATUS ON WATER RIGHTS):

WILBERT CARLYLE - AK-CHIN RESERVATION:

First of all, in your packets there is a special feature on the Ak-Chin Reservation in the Commission's Annual Report, so I don't believe I have to go into how it got started. We are agricultural oriented; as a matter of fact that is the only thing we rely on. Agriculture is our main source of income. In this respect, our water is very important to us. I noticed in the Annual Report it says 11,000 acres that may have been so a couple of years ago, but right now we are only utilizing about 6,000 acres. The water table is dropping at the rate of about 20 feet a year and we are pumping from a lake of about 300 to 400 feet. It is a critical situation because, like I said, that is the one thing we rely on. Our concern is that we need to know exactly where we stand.

We do have one right or privilege and that is there is no depth limitation as far as drilling wells on our reservation is concerned. There are limitations in the surrounding areas owned or leased by non-Indians. Drilling is the one thing about which we know we have the right to do, but we adjust our systems so that we don't overdo it, and run dry. Our only hope is in the future of CAP waters with which the central tribes are concerned.

Basically, the 50 families that live on the reservation rely on water. Like I said before, it is very important. What we gain out of this Conference is going to be of help to me. Water is something that I am not an expert on, as I am not a hydrologist. I want to get as much from the expertise here today as I can so that I can go ahead and plan on other things and utilize our water supply as it is now.

There is another factor involved. We are also faced with electrical problems. The price of electricity at Ak-Chin is high; electricity is essential to the agricultural industry. Lately Mr. Young has been instrumental in getting lower rates because the district that we are in (Western Pinal County), is mainly a non-Indian electrical District 3 and they control it. We are not a member of that group. This is an important matter to us because without that electricity we cannot run the pump. We do not have running streams or anything of that nature, our water sources are all underground. I think we can get by as it is for the next five to eight years, and hopefully, a short time after that we can utilize CAP waters.

I think the Indians should handle their water rights, not the State. I think it should be under federal regulations and not under the State.

VINCENT RANDALL - CAMP VERDE RESERVATION:

I would like to make my remarks very brief this morning. First of all, I think it was a great idea to meet like this, but I think we have the cart before the horse. I think with a meeting of Indians, especially in Arizona, a district type of meeting is essential first. I don't care what kind of reference you use, there are Indians and there are non-Indians. We have the water, they are after our water. I don't care how you put it, black or white. I don't care how Mr. Don Antone puts it, we have a battle either way. Right now we are together, sure, but we are already divided. Mr. Antone already made that point that each one of us have different answers, but before we even start anything we are defeated. There is no unity. There is only one unity, I think in this case, we have the water and that's it. When you get together and make some points and come in and do violence as I say, I don't care how you put it, you are going to have a battle. If you didn't have any battles, you wouldn't have any problems. All this hunky-dory of getting together is great, but facts and reality should be made. We should get together with Mr. John Echohawk and his staff and one other non-Indian who I consider an Indian because he has been talking about

Indian water rights for a long time; but I look out here today and I ask myself, where is he? I think we all know. No use denying the fact that he is hogtied in Washington; that is, Mr. Bill Veeder. Where is he? If there is anyone that can answer questions on facts about how we stand and how the backdoor-type politicians are taking their place against us, it is Mr. Veeder. But where is he today? I would like to make that point clear. We need to get together. We Indians ourselves, need to get together. There are the Colorado River Tribes. We've got their organization. We've got guys down below using what we consider Apache water. There is a division. We need to sit down and discuss some of these points and how we can stand united; then we should have a meeting like this because you know as well as I do that their organization is stronger than we. They have the vote. No need to hide the facts. The Salt River Project is a big corporation. The Apaches know that. We have a disagreement already with them yet the Bureau was supposed to protect us. They convinced some of our leaders into signing, or who intend to sign, some contracts with them, and before we knew it we were sold down the river. We need the bare facts. Our own people need our own resources. We need the few guys that are around that are really Indian oriented; guys like Mr. Veeder, Mr. Jose Sparks -- some of these people. The main thing that is united against us is money. What we need to do is develop our resources. I think we are missing the boat. We are putting the cart before the horse. I would like to make a comment to some of my Apache cohorts here, not from impoliteness, but I think there are things that I need to say to them that only they and I can understand (NATIVE LANGUAGE).

ANTONE GONZALES - COLORADO RIVER TRIBES:

Members of the panel, honorable tribal leaders, honorable Senator Hubbard, members of the state legislature and Commissioners, my name is Antone Gonzales, Sr., Chairman of the Colorado River Tribes at Parker, Arizona.

It is a pleasure to be here to take part in this Indian Water Rights Conference on behalf of the Colorado River Indian Reservation. I would like also to say, at this time, that I share with the other tribal leaders throughout the state and country the common problems we are all confronted with in the areas of preservation where our water rights are threatened for future use: reservation boundaries, economic development, health, education, welfare and many more.

Let me give you, at this time, a brief history of the Colorado River Indian Reservation. Our reservation was established by an Act of Congress on March 3, 1865 and lands were added thereto by Executive Order of November 22, 1873; Executive Order of November 16, 1874; Executive Order of November 22, 1915; an Order of the Secretary of the Interior of January 17, 1969 and June 1, 1970 in Arizona and California to which titles given by Act of Congress of the United States Public Law 88302 of April 30, 1964. We have approximately 284,119 acres making up our reservation.

The development of our irrigation system and previous construction of irrigation works by our Indian people of the Colorado River Indian Reservation, practicing methods of irrigation from time immemorial, depended mostly upon the overflow of the land during spring foods, after the overflow, planting began with corn, beans and pumpkins. During some years there was not much of an overflow.

In 1860 Congress appropriated $50,000 to begin work on the first irrigation canal for our reservation. Work began on December 16, 1867 and ended June 1st of that same year when funds were exhausted. The work was done with shovels, and about 5 miles of canal was completed by that time. On July 27, 1868 Congress again appropriated $50,000 to continue work. The following year the headgate was put in and the canal was deepened and extended. The water was turned into the canal on July 4, 1870, but due to faulty design of the construction of the headgate, too much water was admitted and caused the bank of the canal to wash out and work had to be started all over again. This first canal was known as the Grant-Gant Canal named after President Grant and after George Gant, Superintendent of Indian Affairs of the Arizona Territory.

Work went on with program funds, and from 1886 to 1891 various attempts were made to irrigate with steam pumps, water mills, wind mills, etc. Later, around 1929, diesel engines were installed. On August 30, 1935 the construction of the Red Gate Rock Dam across the Colorado River, was authorized. The dam was completed in 1941 for a gravity-flow irrigation system which we are using today.

Ladies and gentlemen, I am sorry to say that it has been over a hundred years since our irrigation system was started, but it is little over half complete to the length of our reservation.

In 1964, when we sought title to our reservation, and when longer leasing authority was given for our agricultural land, we started leasing for a nominal fee in order for the lessee to put in some of the canals and irrigation ditches for the new land being developed. We figured that approximately eleven million dollars in reduced income to the tribes in the past 10 years went to help the government fulfill the commitments that were made in order to see this development through.

The Arizona v. California decree of March 9, 1864, which stated that the Colorado River Indian Reservation was entitled to 717,140 acre feet of diversion to supply the consumption and use for irrigating 107,588 acres, is questionable.

In view of what we find today, we are requesting a survey of those lands that were not considered irrigable then but which could be considered irrigable with today's methods of irrigation. We have lands that we are getting back from time to time through litigation on the southwest boundary of our reservation for which we need an allocation of water. The Central Arizona Project is received as a threat to our unused water rights and future needs; plus the salinity situation is increasing in the lower Colorado River. Although I see a need for CAP, I think we need a concrete decision to justify our present and future needs as well.

I am quite disturbed with the National Water Commissioner's report, Chapter 13, and the manner in which it was handled by the Secretary of Interior's Office and the Bureau of Indian Affairs. The document, meaning

Chapter 13 of the report, was given to tribal leaders just two days prior to the Commission's open hearings of the report in Phoenix; we were expected to testify to it immediately to the Commission (from 1968 to the present) and document the recommendations we made. Although Chapter 13 has been rewritten into Chapter 14 due to the tribal leaders objections, and recommendations, I feel strongly that with regard to Chapter 14, time should be given to tribal leaders for a thorough study of it before any recommendations are made.

BEN KILL - FORT MCDOWELL RESERVATION:

Talking about water, we have plenty of water. The Verde River flows right through the center of our reservation. I don't know how much water flows through there, but the flow is controlled by two dams above. We are allowed to have 390 miner's inches out of that. That is supposed to be enough to irrigate 1,300 acres. I have always disagreed with that for this reason: You take 400 acres, for example; with 40 Indians having 10 acres each, it will take two days to irrigate a crop, approximately. Let's say that Tony was the first one -- he gets two days to irrigate, then, by the time the 40th person with 10 acres irrigates his crop or by the time the last person gets his crop irrigated, Tony will have to wait 20 days or so before he will be able to irrigate his corn. I think for the hot summer months, waiting 20 days for water is going to kill his crop and this example involves only 400 acres. This is supposed to be sufficient to irrigate 1,300 acres. That is the situation on our reservation. I don't know how it is on others. I don't know how they control it, but I know when you take 1,300 acres, 390 miner's inches of water is not sufficient. It has been proven on our reservation.

Talking about water rights, I don't know what water rights I could speak on other than that 390 miner's inches of water is not sufficient for us.

We have been told by the Salt River Water Ucers Association that we have no underground water rights. This was told to us about 10 or 15 years ago when we tried to negotiate with the water company of Paradise Valley to drill wells to deliver water from the reservation. The Salt River Water Users Association said that we had no underground water at all. The only water rights we have now is what is adjudicated from the Verde River.

Now the National Water Commission which most Indians know about, is trying to explore pockets of underground water that is not being used by the tribes. My reservation has lots of water, but we do object (to this kind of exploration). They tell us we have no underground water rights. Now they want to explore our reservation so they can extract some of the pockets of water that we are not using. We can't develop our own water resources. We can't even develop our own water company.

We have two developments around us, Rio Verde Development, a housing outfit going in and they need water. They want to see if the tribes can develop some water pumps and deliver water from the Verde River to the Rio Verde Housing Development. We have Fountain Hills on the west side of our reservation. It's a community that is supposed to be self-contained. It is supposed to have a population of 35,000. They will be needing water.

I don't know what kind of water we own or what we can do with the water we have. We are just in the dark.

One thing about the CAP; some of the dry reservations need the CAP water. Take Sells for example; I haven't heard how much water they are going to get, or Sacaton, or Ak-Chin. But of course, that is not any of my business to know.

On our reservation our population is only 345. We are the smallest. CAP is going to build a dam called Orme Dam. It is going to take 15,000 of our 24,000 acres, which only leaves us 9,000 acres. So with a population of 345 (and we are increasing all the time) 9,680 is not enough. Where do we go from there? These are some of the things the Ft. McDowell Indians have to decide for ourselves because they say if you can't decide for ourselves, someone is going to decide for us, which is true. It has happened before. In many cases the Indians have been kept in the dark, and they didn't know how to decide for themselves so the Bureau has been deciding for them all of this time. They are not experts in their field but they do decide for us, and things never work for us. I have been to other reservations and have seen how they developed their natural resources and water. On our reservation we can't do that, so we have always taken their word for it.

The tribes are divided. If you look at history, the Bible tells of a group of people that were trying to build a tower to seek God and He changed the language and when He changed the language they could never get along. Maybe that is why we can't get along because the language is different. Papagos and Apaches don't understand because they speak different languages and their customs and traditions are different. But nevertheless, I think we can overcome that. I think meetings like this can pull us together. When we are in trouble we can all pull our knowledge together. I think this is great. Thank you very much.

ALEXANDER LEWIS - GILA RIVER INDIAN RESERVATION:

The earliest and longest continuous irrigation on the American continent north of the Mexican border has been by the Pima Indians and their Hohokam ancestors. Archaeological studies show that this irrigation has been continuous in the Gila and Salt River Valleys in central Arizona for over 2,000 years.

Before the coming of the white man the arid Gila and Salt River Valleys were irrigated by the Pima Indians who from time immemorial have had a highly organized civilization. From dams in the rivers hundreds of miles of canals conducted the water to the fertile land. Canals were up to 75 feet wide at the top, up to 40 feet at the base, and up to 12 feet deep. Except in years of drought or extreme flood the Pima Indians and their Hohokam ancestors enjoyed an economy of plenty--abundance which not only furnished surplus to their needs but allowed the employment of other Indians for work, services and entertainment.

A 1967 report by the National Parks Service states: "The development of this extensive irrigation system with simple wood and stone tools represents a monumental effort--an effort strongly indicative of a highly organized work force and a high degree of engineering skill."

"Although most of the lands along the Gila River, including the lands on the lower terrace just south of the Snaketown site, were farmed by irrigation in the past, the (non-Indian) diversion of water farther upstream has prevented farming in this vicinity in recent times."

Throughout recorded history (Spanish, Mexican and American) the Pima and Maricopa Indians continued to farm the Gila and Salt River Valleys in central Arizona. In the Spanish and later Mexican periods, land routes from Mexico City to California went through Pima-Maricopa territory on the Gila River where the traveler was protected and assured a plentiful supply of food for himself and his livestock.

During the Mexican War (1846-47) these Indians furnished the American Army hundreds of thousands of bushels of foodstuff. It has been estimated that in the 1849 gold rush more than 10,000 persons traveled through the Pima and Maricopa villages on the Gila River and were fed and furnished supplies for continuation of their journey.

Hon. Charles D. Poston, the first delegate to Congress from the Territory of Arizona, wrote: "The Pima Indians have lived in their villages on the Gila River from time immemorial; at least they have no tradition of the time of their coming. The water from the Gila River to irrigate their lands is obtained by canals constructed by the common labor of the tribe. Their subsistence is wheat, corn, melons, pumpkins, vegetables, and the wild fruits. They have herds of cattle, plenty of horses, and great quantities of poultry.

The Americans are indebted to the Pima Indians for provisions furnished the California emigration, and for supplies for the early overland stages, besides their faithful and unwavering friendship."

In 1859 Lieut. Sylvester Mowry said: "The Pimas and Maricopas occupy a beautiful and fertile tract on the Gila, one hundred and eighty miles from its junction with the Colorado. They are a brave and hospitable race; --they live in villages and cultivate the arts of peace. Their regular fields, well made irrigation ditches, and beautiful crops of cotton, wheat, corn, pumpkins, melons and beans have not only gladdened the eye, but also given timely assistance to the thousands of emigrants who have traversed Arizona on their way to the Pacific---much as we pride ourselves upon our superior government, no measures have been taken to continue our friendly relations with the Pimas--and to our shame be it said it is only to the forbearance of these Indians that we owe the safety of the life of a single American citizen in Central or Western Arizona, or the carriage of the mails overland to the Pacific."

It would take volumes to contain all of the letters and articles praising the Pima-Maricopa Indians and describing their irrigation and farming achievements.

In 1924 the Senate Committee on Indian Affairs reported: "Gradually, by reason of the white settlers above them diverting the waters from the river, the cultivated land of the Pimas was reduced to barren and desert lands. Being wards of the Government, they could not protect their rights through the courts."

Similarly, the House Committee on Indian Affairs stated in its report on the proposed San Carlos Indian Irrigation Project: "Your committee finds the following to be the facts with respect to the necessity for the enactment of this legislation:

"First. That the Pima Indians had an adequate water supply for the irrigation of their lands prior to the time that the United States acquired jurisdiction over the Gila Valley. This is proven by the writings of many travelers who visited the Pima villages and there found the Indians producing crops more than sufficient for their needs."

"Second. That as wards of the Federal Government the Pima Indians were entitled to have their water supply protected and maintained, but this the Government failed to do."

"The Amendment proposed by your committee makes it certain that the San Carlos Indian Irrigation Project shall be constructed primarily for the benefit of the Pima Indians and that only such part of the stored water as can not be beneficially used by the Pimas may be made available to lands in private ownership."

In the same session, Congress passed and the President signed the Act of June 7, 1924 authorizing construction of Coolidge Dam "...for the purpose, first, of providing water for the irrigation of lands allotted to Pima Indians on the Gila River Reservation, Arizona, now without an adequate supply of water and, second, for the irrigation of such other lands in public or private ownership, as in the opinion of the said Secretary, can be served with water impounded by said dam without diminishing the supply necessary for said Indian lands..."

Thus Congress by law secured for the Pimas the right to use from the water stored by Coolidge Dam so much as is necessary to irrigate Pima land before it is used for irrigation by non-Indians. This together with the Indian prior right in the normal flow of the Gila River would assure them of a firm adequate supply of irrigation water and allow them once again to take their place as leaders in our agricultural economy.

On January 8, 1926, the following appeared in the records of the House of Representatives:

"Mr. Hayden. The Pima Indians were first appropriators of water on the Gila River. They have been deprived of the use of their water by the negligence of the Federal Government in failing to protect them in times past both from diversions above and against a ruination of the watershed by overgrazing. The only way to restore the ancient water supply of the Pima Indians is to create a great reservoir at San Carlos...the primary purpose of the Act passed last year by the Congress to continue the construction of the San Carlos Project was to take care of the Pima Indians..."

"...The surplus water will be used upon the lands belonging to white settlers, but the Indians must be first provided with water. That is clearly stated in the law..."

"Mr. Arentz. Do the Pimas have the prior water right?"

"Mr. Hayden. The gentleman from Nevada should know that it is conceded by everybody that the Pima Indians are the prior appropriators, not by years but by centuries."

"Mr. Arentz. So the white settlers come after the Pimas are served?"

"Mr. Hayden. Certainly."

"Mr. Leatherwood. Do I understand the gentleman to say that the rights of the Pima Indians are vested rights?"

"Mr. Hayden. The law of my State provides that the first in use shall be first in right, and there is no question but that the Pimas were the original appropriators on the Gila River and have a vested right to water."

"Mr. Leatherwood. For further information, is it conceded that the right of the Pima Indians is a senior right to any rights of New Mexico upon the river?"

"Mr. Hayden. Or to the right of any white man anywhere on the river above."

The United States, on behalf of the Indians, filed suit against all non-Indian water users to determine judicially the respective priority of right of every Gila River water user. Extensive evidence was presented. After almost 10 years, both the United States and the non-Indian defendants agreed that the Indians had first right to the use of the flow of the Gila River. Yet the United States stipulated with the non-Indian user either to take ahead of or share in the Indians' prior water rights.

Learning of the proposed stipulation which would deny them the exercise of their rights, Pimas went in mass to Tucson to object. The courtroom was so full of Government and defense attorneys that not even one Pima was allowed in. At their request a non-government attorney presented their petition to intervene before the stipulated decree was signed. The Court denied their petition on the grounds that the United States as trustee for all of the Indians' water rights had the sole power to choose counsel and represent those rights. The Indians had no right to choose their own attorney nor to present their own case. On the same day, June 29, 1935, the stipulated decree was signed.

More than 125,000 acres of the arid Gila River Reservation are irrigable. The Gila River Decree recognizes that 50,000 acres of this land (by reason of prior appropriation and beneficial use) have the prior right--from time immemorial--to the use of 210,000 acre-feet of Gila River water. Under the Act of June 7, 1924, this land also has the first right to use water stored by Coolidge Dam.

Under the Winters' Doctrine over 75,000 acres of other irrigable land on the Gila River Reservation is entitled to use such waters of the Gila and Salt Rivers as may be necessary for their irrigation. Both rivers are controlled by the United States. Gila River Indian Community has demanded that water be delivered to some of these lands for present use. The government has not answered this demand.

BILL SMITH - COMMISSION MEMBER - Regarding News Coverage:

We are following the pattern established more than ten years ago in connection with Town Hall, and that is that the press are invited to attend all of the sessions. Let me put in this caution, and I hope that the members of the press will abide by this: it has been the custom over the last ten years -- and I think that it is very necessary for the success of this or any other Town Hall -- the press is free to fully report any of the prepared speeches which are not part of the panel sessions. In other words, the comments this morning by the Governor, by the Chairman of the Apaches and so on, prior to our entering into the panel part are completely open. Also, during the remainder of the meeting where we have speakers at lunch time or in the evening, these speeches are completely open to the press. The press is permitted to summarize any of the comments or any of the discussions during any of the panel sessions; but as in the past, we hope that for this meeting they do not attribute to any speaker his name to any of their comments. This is so there can be a freedom of discussion as we move into tomorrow afternoon. I am quite certain that the discussions will be very heated. We do not want any speaker to be hampered by feeling that what he says is going to be reported and attributed to him in the press. If a speaker makes comments and the press wishes to interview him after the panel sessions are over, then that is between the press and that particular speaker. He may be quoted if he wishes and obviously his name would be attributed to those remarks. It is my feeling in beginning with our first panel session this morning, when we had presentations of the water situation by individuals representing each of the tribes, or the session we are now going to have before lunch, or the afternoon session, or the session tomorrow morning, that the names of speakers should not be attributed except with the express permission of that speaker afterwards. This I urge, so that there can be a total freedom of discussion among members, Indians and non-Indians. It is my recommendation that we do that, following the pattern of the Arizona Academy Town Halls over the past years.

2nd PANEL - TRIBAL LEADERS (STATUS ON WATER RIGHTS):

STERLING MAHONE - HUALAPAI RESERVATION:

My name is Sterling Mahone and I am Chairman of the Hualapai Tribal Council of the Hualapai Reservation.

Quite a few people have asked where Peach Springs is located. We are located in the northwest part of the State, along the Colorado River. The northern boundary of our reservation is the mainstream of the Colorado River. Our reservation is comprised of 991,000 acres.

As I listened to each speaker here, I think we have very important things in common. As of today, I am thinking in regards to what Mr. Randall said this morning. I feel now that the federal government has denied us and has neglected to go into our water situation and problems on our reservations. It is their responsibility. This matter should be considered by the federal government as trustee to us Indian people.

Right now on our reservation, we have no plans of any kind to what is known as water rights, therefore, it is difficult to say anything more.

We have three tributaries. As a matter of fact, streams are running in the heart of our reservation into the Colorado River.

It has been almost a hundred years now during which time no set of legal water rights was imposed or planned for us people in protecting our water rights. I am here to learn more, to understand more, as to what steps we can take and what ways and means we can accomplish the very important things we are talking about today. A few years ago when Boulder Dam was constructed we knew that Arizona, Nevada and California had been fighting for the water. Just recently I learned again that the Colorado River Indian Tribes have formed their own water commission. I think all of us have a legal right of maintaining and protecting our water rights on our reservations whether it is going around or it is a stream.

I am very much disappointed that Mr. Veeder who was requested by the Inter-Tribal Council could not be here this date. I thought maybe I could have an individual consultation with him to understand more of the matters.

BILL TOM - KAIBAB-PAIUTE RESERVATION:

My name is Bill Tom. I am Chairman of the Kaibab-Paiute Tribe. We are located up north. I really don't have any water problems because I don't have any water to begin with. I am located in the Arizona strip country. The only water that we have are two streams. We are allowed a third of the two streams. The other known water that I know of would be underground. We would like to keep that intact and do what we can with it to develop its full potential. The only water known to me would be the two streams on my reservation. The Kaibab-Paiute Tribe was given a third of the flow. We have no lakes or rivers running through the reservation. The only other water, if there is any, is underground. I hope my Tribe is not restricted to making application to drill for water. My Tribe would like to continue to explore and drill for water and develop the reservation to its full potential. We still need the federal government's protection and assistance in developing our potential. That is the way I would like to see it. I wouldn't want to make out any applications to drill water on my own reservation. I would like to go ahead and do it. Thank you.

JAMES BURN - FORT MOHAVE RESERVATION:

It seems to me this morning that I am a little disappointed that the man with the authority on water is not here, that is, Mr. Bill Veeder. I want to say this one thing, that I appreciate what our Governor said this morning.

Many years ago our reservation was in the wilderness, since I was four. I am 62 years old now; I lived in New York for 22 years and I always took part by coming in for every tribal election and finding out that there was trouble.

In the last five years some changes have been made but still our land hasn't been developed. Four years ago I thought I would change the ways (of this undeveloped situation). The potentials were great, and I began to look around to see anyone with a future -- a dedicated person to see that our land was developed -- one that we could be proud of. I made this statement at every meeting I went to.

One day I met with a committee to help us develop our land. We met in Needles, California, with representatives of the state and the feds. They asked us what we wanted to do. I sat there listening. The last remark that was made was that we needed money for a feasibility study of our land. Our land is very fertile. Our recommendations went in. In a few days, I think you read in the paper that the Four Corners allotted $80,000. We made a feasibility survey of our land by tribal engineers. They found that about 19,405 acres of irrigable land was available for agricultural development. Right then we began to hustle and made the joint venture seem easy, and started development of our land. A few months ago, as I recall, a package was completed and we laid it in the hands of the Bureau of Reclamation. At this moment it is in their hands. I want you to give us well-wishes so that we get that 8 million dollars to develop our land and 10,000 acres of land in agriculture.

We've got our water rights and this is what we are doing now at Ft. Mohave. In a few years we will have land to be proud of and I want to thank everyone of you that participated in it -- state and feds, for extending a big hand to make us go on in the future. You will say this watermelon came from Ft. Mohave or a bale of cotton came from Ft. Mohave. That is why I am here; to express gratitude from our Ft. Mohave Tribal Council. I am the Vice-Chairman; my name is Jim Burns. I would like to have what the Governor said in regards to our water in writing. I want to thank you for allowing these few remarks and moments that you gave to me.

PAUL SMITH - SALT RIVER RESERVATION:

I would like to address my remarks to the report of the National Water Commission. There are three items that I would like to discuss for your consideration. I am sure you all have read the report and might have some similar thoughts. One of the items that I would like to discuss is the quantification of Indian water. The Salt River Community has requested that the Bureau of Indian Affairs begin immediately to conduct a water inventory of our present as well as our future needs. It is our feeling that by knowing our needs we will be in a better position to determine whether or not we are using all of the water to which we are entitled; secondly, we would have no objection in quantifying our water rights and needs with the state. It is our feeling that if the federal government as well as the state is knowledgeable of our rights, water won't be given as freely as in the past; however, we feel strongly that the state has no authority to determine our needs or allocate Indian water to the various tribes.

Another point I would like to bring out is that sometime in the 1950's another water commission was established. One of the recommendations of that commission was that the federal government appropriate sufficient funds for complete development of Arizona Indian lands.

Apparently this recommendation has gone unnoticed because our Indian irrigation systems are inadequate today. The 1973 Water Commission has also made a similar recommendation: that appropriations be made by the federal government to develop irrigable Indian lands with a proper irrigation system and adequate gravity flow, along with funds for drilling wells with sufficient pump and booster systems. This recommendation is vital to the continued agricultural economy of our community; however, in addition to adequate funding to develop lands, funding should be made available for the continued maintenance and revamping of our present systems as well as future systems. To follow up on the Ak-Chin statement, adequate power to operate our wells and pumps is most necessary.

Another important point that was brought out before is the fact that Indian Water Rights belong to the Indians. The United States Government does not own these rights but acts as a trustee for the Indians. While the Bureau of Reclamation makes plans to dam rivers throughout the United States and in most cases jeopardizes Indian Water Rights, the same federal government who is supposed to be our trustee sits idly by and says nothing. The time is long overdo for the United States Government to begin exercising its responsibilities to protect not only our Water Rights but our land, hunting, fishing and all other rights for which the government is supposed to act as our trustee.

ELMER SAVILLA - FT. YUMA RESERVATION:

Ladies and gentlemen, guests and tribal chairmen -- I have mixed emotions because I had felt that, for the most part, we tribes were agreed as to what approaches should be made. I think we are not to far away in our thoughts on Water Rights in general; but I have too say first that I agree with the gentlemen from Yavapai, yet, I personally feel that along with Mr. Jim Burns, what I hear is not necessarily what I believe; what I see, even in writing, is not what I believe; what I see happening is about the best evidence that I can find on how agencies, states, counties, etc., really feel; not necessarily the written word but -- show me.

I believe that we, the American Indian Tribes, are now coming into the most important time in our history; not the winning of the West, as they call it, this was not the most important thing that happened, it might have been inevitable. The arrogance that the Euro-Americans showed when they came over is that what they saw they wanted, and what they wanted they took.

One of the things that we have to decide now as tribes is, has this basic thinking changed? I tell you, it hasn't. What they see they want; what they want they are going to get some way, regardless of what they tell you. This is the important thing the tribes themselves have to decide. There is nobody else that can tell you how to go. You must do this now because in these coming years, the years 1973 and 1974 are going to be the most important in Indian history because of all the legislative moves that these arrogant Euro-Americans are going to push, regardless of what they tell you. The laws are still being formulated. They are still being read in the Senate and the House. These are the things that you have to look at -- then make your mind up as to what you believe.

They are even attempting to approach upon your air and telling you how you are going to use all of your resources, not just land and water. Land and water are tangible things, even the intangible air is coming into question.

A brief history about our Quechan Reservation -- the Quechan Reservation lays mostly in California. It receives services from the Phoenix Area Office, therefore, about 75% of our business is conducted within Arizona. Our only job market is in Arizona. Many of our services are only in Arizona, for this reason, we feel very close. Our water rights are adjudicated along with the Colorado River Tribes. Our future and destiny is linked directly with Arizona. Whatever water we get is left up to Arizona. We are heavily involved in the fight to protect that water right.

Our priority date for the water has been set as 1893. The Arizona v. California suit quantified our water right as 51,600 acre feet based on 7,743 irrigable acres. The figure was always in question, but again, the trustee has always failed to deliver the goods as far as definite figures and benefits were concerned. The Bureau of Indian Affairs this past year admitted the acreage figures used to quantify the reservation rights were only estimates. They used estimates in a court suit that was supposed to determine our future water rights. If anyone can justify using estimates in court, I question their integrity. The Confederated River Tribes, which the man from Hualapai referred to, was established as one measure of making sure that the River Tribes received their proper representation for their water rights because the Justice Department wanted to finalize the decree of the Arizona v. California case. We held a meeting in Washington. At that time, we objected to the figures that were used. We objected to the method in which they were trying to force us to finalize the decree. As a result, we found that $50,000 had been set aside for the Bureau's budget for 1973 for this very survey to determine the correct irrigable acres. At a special meeting in Phoenix in April the Department of Interior Solicitors, their top western solicitors, spent all day trying to convince us that it couldn't be done -- that is, the survey. They said that there was not enough money; we had $50,000. So the survey, when finally done, took only a few hours and very little money. It occurs then again, why did they spend so much time and effort trying to convince us that this could not be done? It all relates back again to a conflict of interest. The Bureau of Reclamation has always been our enemy and always will be. I have really, today, no tangible evidence or results of that survey. I was handed a pamphlet which really tells me nothing but hopefully soon, we will have a really meaningful result of that survey. Any irrigation survey team that can come on the reservation and in a few hours supposedly rectify something that has been going on for years, is not very good, as far as I am concerned. The survey was supposed to have been made in consultation with the tribe. We never saw the people.

We hope soon to add approximately 30,000 acres to the reservation. Hopefully, we will be able to justify water for this, but from all indications based on legislation and present water rights, we will never make it. As you know, land without water in our desert area is worthless. So this will require water. Other reservations have their claims in, trying to keep from getting cut in their water quantifications.

Where will the water come from? The only answer is that we have to use what we have. There are plans afoot to go up to Washington and siphon some of their water down this way. They are getting water from someone else. I hope we don't have to resort to stealing Washington water to make it here.

Portions of our reservation have been taken by the Bureau of Reclamation for canals to carry river water to other areas. Land for the canals was taken without right of way, without permission from the tribes. As many of you know, the Reorganization Act specifically prohibits this type of thing, but yet, these things have been done. Again, arrogance is shown by the Bureau of Reclamation and from the Department of Interior. A canal for our own use was promised to us by the United States Government in 1893, but as yet, they have not turned a shovel for it, although they didn't waste any time making the All American Canal right through our reservation.

The Metropolitan Water District of California takes 800,000 acre feet over and above their allotment from the river, yet no moves have been made to stop them from taking this illegal water. The Bureau of Land Management and Reclamation annually hauls tons of our sand and gravel away from our reservation landu for their own purposes. These departments are agents of the United States Government and have been our secret enemy for years. I think that every tribe here knows these departments are your enemy, not the state, although the state joins hands with them probably in many cases; but the Reclamation Bureau is your main enemy in this matter of water and land and they are almost impossible to fight because you have to use, in most cases, the same attorney that they use out of the same pot. There is a terrific conflict of interest. I don't think there is much use in deliberating these points because the tribes know this. Every agency man here or agent of the government knows this. All I am doing is passing lightly over it to put the things in proper focus. The tribes have to get together and decide who they are going to fight against principally. I point out these failures by our trustees to illustrate who the real enemy is. The United States Government sanctions and encourages their raids on our resources; witness all the appropriations for Reclamation projects, all the appropriations for non-Indian irrigation projects, all the suggested appropriations by Chapter 14 for non-Indian water users. They have no intentions of stopping MWD from taking that extra 100,000 acre feet of our water, yet they wish to reduce our allowance which barely covers the land that we have. The tribes know this is a fact. Reclamation has no intentions of stopping their projections just because it interferes with Indian water rights. They don't care. They're against us right there. They want what they see and they are going to get it -- if you don't rise up in the unity that the man was talking about. States have no intentions to halt their encroachments. They have no intentions of stopping the CAP. With all due respect to Governor Williams that it would not hurt the Colorado River water, there are other private interests that have held steady and say that it will. Again, you have to decide who you are going to believe. The ones with political motives -- I think you have to look twice at that.

The National Water Commission rewrote Chapter 13, they say, to satisfy Indian requests because of so many complaints. I believe that they switched the weapons to Chapter 14 when they rewrote it. They just put it in the other hands hoping that you are going to swallow it. The states are participating in a more subtle manner by using their lobbyists and legislators to plunge the knife while they supply the sympathy. I do not mean to hurt personally any of our state friends or our bureau friends. As a general Indian policy I think these are the things we have to look at; for example, the Land Use Bill which has been ratified by most of the states. But again, as pointed out in our Inter-Tribal meeting, the Land Use Bill is going to be one of the principle weapons that the states are going to use against the tribes. They have had other legislation come up and is under consideration. Why do they go to all of this trouble to get this water? To get control of the resources? There is no other reason except water is gold. Governor Williams said that water is the answer to everything. For the tribes it is life and death. I appreciate comments by some of the central Arizona tribes. I don't blame them a bit for feeling that maybe, politically, this is where their future lays, by going along with the State. It may be. I have no quarrel with their position at all except that basically our problem is not one tribe against or with another tribe. This is not the problem. It may seem to be the point that politicians would try to use. Basically, our problem is this gathering of unity or Indian political force for one purpose and that is, protecting resources -- nothing else.

Gentlemen, let's face the truth. We have the key to the vault. We have the key to the bank -- water. They want that key. We cannot give them the key to the vault. Our only hope is in unity. I have gone to meeting after meeting where they have said that we have to stop fighting amongst ourselves, unity is the word, then everyone went home and forgot about it. Today is the most important time in your tribe's history. You have got to prove the unity that you talk about. It makes no difference if you are a dry or wet tribe, the problems are all the same; you need water. We need water, and they need water -- talking about non-Indians. According to the law we are first on the list; that is, unless you let them change it and unless you give them permission to do it. If you are an IRA tribe it gives you the authority to keep water resources in your ground. You Central Arizona Tribes have the advantage because they need you to get the water. I suggest that you also use them if this is the route you want to go to protect your groundwater rights. Your groundwater rights is your only source of future water. I think by this time, you should have protected your groundwater rights more than you have but this is your own business. If they need you to get this water and they are serious about helping you, make them prove it. As Mr. Burns said, "put it in writing." Even that is not enough. Ask them for more groundwater. Ask them for funds to develop your land to make it productive, which you can't do, without that groundwater. Ask the government to properly protect your resources.

Mr. Veeder is not the important point. The point is that you were denied one of your services just as much as if you were denied your Johnson O'Malley or any other government service that is supposed to be given you by law. Mr. Veeder is not the issue here although we would have loved to have him here. He is one of the greatest advocates we have. The issue here is the lack of the trust of responsibility. The service that they are supposed to give us is no where evident. The Inter-Tribal Council of Arizona has made a resolution and sent a telegram to Secretary Morton threatening the Secretary with legal action if he did not provide them this proper service. If you fall down on that threat, if you back up, you have lost round number one. I think you have to get together and decide once and for all that you are going to stand up as a group in unity and say, "Secretary Morton, we asked and you failed, now we are going to act." If you don't do that you have lost round number one. I agree wholeheartedly with Mr. Veeder's analysis of that report. If Chapter 14 goes through -- that is your death sentence.

It will do no good today for me to list the Quechan land and water problems because most of them are the same as yours. We have the same land problems and we have the same water problems and they are all happening because of the one big reason, the failure of our trustee to carry out his responsibilities.

Your ancestors had pride enough to fight for what they thought was theirs. Apaches,everybody here, and all of the tribes here, their ancestors had more pride then what I can give you credit for now. They fought for what they thought was theirs and the only reason they failed was superior numbers, firepower -- firewater, if you will, too. They lost because of these things. Now again, your fight is just coming up. This is when you are going to prove to the rest of the Indians you have the guts enough to fight for what is yours. The ancestors of ours signed agreements and treaties and they trusted these Euro-Americans. They trusted them, just like they are asking you to do now, only to be put aside until it is politically time to be used again. Here again, it is my firm conviction that we will be put aside to be used only until it is politically time to be brought forth again. Haven't we progressed enough to see what our grandfathers couldn't see? They didn't have the education or the chance that you people have had in the past few years. Hasn't there been enough bad experience in our history for us to learn from? Let's not let them split our unity by separating us from wet or dry, or any other type of distinction. Let's not be split by tribal motives. We are Indian people. The Constitution that everybody always gets up and stands on, which even names the Indians as special people; I accuse you of not living up to that. You believe that brings pride out as a people you haven't lived up to this. You haven't been a special people. This is why they have been able to put things over on you. I say that you are a special people. You are a special Indian race. You and I are the first Americans, as someone else pointed out. We have all been promised the same benefits by law. Let's make them carry out their contracts. They said they would do it. Let's make them do it. They have sent enough money to Germany, Japan, Isreal, and everywhere else, except here. They give you enough to get a job started but never enough to finish it to where you could really use it for your benefit. I challenge anyone to dispute that statement. They sent our people to schools for non-existent jobs. Again, our brother from Yavapai said it right: the cart is before the horse. In every program that they have brought to you, the cart has been before the horse. Keeping you in what they consider is your place. I say, it is time to stop that. We have to reach our proper place; that is, up to their level with them. We now want to develop our land and water resource. It takes money for that. We want them to give us what they promise so let's act like Indians now and get these things so we can be proud of being Indians.

Any legal contract that is made requires consent on both sides and requires proper knowledge on what that contract is going to carry out.

I have just heard several people this morning admit that they do not know what the CAP is going to give them. You have been promised many things; but I ask you, how many acre feet are you going to get this year or when it is done? How can you go along with a contract that gives you vague terms like that? Iv you can do that, my friend, you are all wrong. You are letting tha rest of the Indian people down if you can enter into a serious life or death contract like that without knowing how much water you are going to get or where you are going to get it. These are my honest feelings, the way I feel inside. We are not, up to this time, carrying out what our destiny should be. We have let down our grandfathers. They fought for it. So far, we have not. We are going along saying meekly -- what do you want us to do? Tell us what you want. Think about it.

DANIEL PEACHES - NAVAJO RESERVATION:

Briefly I want to point out what the Navajo has been doing in the past year or so as far as water rights are concerned. Last year about the time when the U. S. Department of Interior was trying to set up an office on Indian water rights, the Navajo Tribal Council authorized a task force to put together a plan as far as the Navajo water rights were concerned. This developed into a three-phase plan.

The first plan was to compile all the information that relates to Indian water rights as far as the Navajos are concerned with the State of Arizona. This plan required getting information together from all sources. This required a certain amount of money to be spent. The amount of $5,000 was arrived at. The tribe felt that there was not time to apply for money from the new water rights office in Washington. They would have to appropriate more money and, hopefully, get reimbursed later for the money that was spent. This was done and the study has been completed as far as that phase is concerned. The tribe has been reimbursed.

The second phase requires establishing the current needs as well as the future needs of the tribe. In order to know what we are talking about, we have to know what our needs are. We based our future needs for 50 years which would make it the year 2020. We felt this was necessary in order to establish plans, priority, etc., to reach the goal that we are thinking about. This will cause additional funding for this purpose. A lot of technical information-gathering has to be done in making surveys of what our needs are, and to project into the future just what our needs will be 50 years ahead, based on our population and based on how we plan to use our water. We hope to be doing the second phase this year. However, we have funding problems again. Again we have to depend on the Bureau of Indian Affairs and the Office of Indian Water Rights for funding. The funds are not coming through as we had hoped. Therefore, at this point, we are getting behind in starting on the second phase of the study. Once we get the money situation, and an understanding with the B.I.A. and the U. S. Water Rights Office taken care of, we can start this second phase.

The third phase is some years down the road but we can put our information together knowing what our needs will be and how we are going to implement it.

This is really the only way the Indian tribes can handle the water that is supposed to be theirs; otherwise someone else will use it. We have to have the plan. We have to have the information. We have to have the capital to put that water into use. I think we should put our resources together, put our information together, and make it available to each other so we can start working for goals.

The first information-gathering phase of the Navajo water rights has been completed. The information is available. We have it in one facility in Window Rock and we hope to make it available to any tribe in Arizona to look at, and make their own plan and start on the road to do the same things that the Navajos are doing.

These are essentially very brief words of what the Navajo Tribe is hoping to do, and has been doing for the past couple of years. As the last speaker pointed out, there are conflicts of interest, there are political forces which outweigh the Indian people at the state and federal levels; therefore, the Indian people have to put some plans together. They have to put resources together in order to overcome the conflict; in order to get their rightful share of water and resources that were supposed to have been theirs for a long time.

LUNCHEON SPEAKER - GEORGE VLASSIS:

In looking at the packet of materials that have been provided to the people in attendance at this historic conference concerning Indian water rights, I noticed an "Indian Water Rights Vocabulary" which speaks of everything except what I want to talk about. The vocabulary goes from "A" to "W" -- Aboriginal Rights to Winters Doctrine. I would prefer to talk about unity. Because without unity, neither aboriginal rights nor the Winters Doctrine is going to do anyone a great deal of good. (For those of you who may be confused, I am not Bill Veeder, and Bill Veeder is not here. However, Bill and I share a lot in common in our thoughts concerning Indian water rights, and I know I, as well as all of you, wish he were here too).

I suppose most luncheon talks traditionally begin with a few jokes or other remarks of a not particularly serious nature. Considering the nature of the subject of this conference, Indian water rights and Indian water problems here in Arizona, I feel that any such opening would be rather inappropriate. There may be some jokes in Indian water rights, but as far as I can tell, most all the jokes have been on the Indians.

The erosion of Indian water rights which has taken place, and which continues to take place, is a serious matter regarding not words but action, not commissions and study groups, but litigation and legislation.

Both the Indian and the non-Indian can look around in the Southwest and see a vast number of projects involving water. Here in Arizona there is the Central Arizona Project. And we have here today Mr. Ernst, who is the Director of the Central Arizona Conservation District, who will no doubt speak upon this subject. This billion dollar project is already far past the talking stage and construction is actually beginning.

In New Mexico and Colorado there is the San Juan Chama Project which already brings water from west of the Continental Divide into the Rio Grande.

In California the partially completed Central California Project brings water from water-rich northern California into water-hungry southern California. And as we all know, California has been draining the Colorado for many, many years.

Non-Indian water projects starting as early as the Newlands Project in Nevada, which has helped to drain Pyramid Lake, began as early as the first years of this century. There are very, very few projects which can be looked to which benefit Indians either directly or indirectly, and while Indian water rights have been written about in the cases and in the various literature, Indian water rights--the "wet stuff," "what we drink"--is largely a matter of speculation, conjecture, and guesswork.

Here in Arizona the Salt River Project has been draining the ancestral lands of the Apache people for over 70 years. The project water is well used today by the non-Indian ranchers of central and southern Arizona. The lakes that have been created by the Salt River Project are used by hundreds of thousands of people. But what benefit has the Salt River Project brought to Indians, and what water has gone to Indian people from this project? I find it very difficult to point to any concrete examples of benefit to Indian people from such things as the Salt River Project.

The faulty construction of the San Carlos reservoir and dam makes it unable to hold more than a fraction of the water for which it was designed. Anyone driving west out of Safford and Thatcher can readily tell when he enters the San Carlos Indian Reservation, because that's the point at which large cotton fields and other evidences of heavy agriculture cease, and the all too familiar pattern of substandard homes and small gardens that mark an Indian reservation begins.

Yes, there has been water development in Arizona; and yes, Arizona has learned to use its limited water supply, but the Indian people of Arizona have not been the beneficiaries of this use. But all I am telling you is what you already know.

The question is, what do you do now? How do you deal with the actual conflict between Indian water rights and needs and non-Indian water uses? How do you create an Arizona Indian Project, an AIP, to match the Central Arizona Project, the CAP. For too long the non-Indian water users have divided the various Indian tribes, have been able to gain the backing of some, while retaining the opposition of others.

As an example, just last winter Peter MacDonald, Chairman of the Navajo Tribal Council, received a request from another tribe within the State of Arizona to provide legal assistance at a scheduled meeting with the Secretary of the Interior in Phoenix. Mr. MacDonald immediately responded to the request and asked me to attend that meeting. Since it was just four blocks up the street at the Westward Ho Hotel, I didn't think it would be much of a problem--until I got there, and then a tremendous hue and cry was raised that the Navajo Tribe had no right to attend a meeting concerning the Central Arizona Poject which had been scheduled at the request of the tribes in the southern part of the State.

Strengely enough, most of the opposition appeared to come from non-Indians, and I was unable to successfully get the point across that I was there at the request of a tribe other than the Navajo Tribe. In any event, I was effectively prevented from attending most of the meeting and, thus, could not comply with the request of one tribe to assist another. I am sure all of you know plenty of other examples of this kind of thing.

For too long the Indian people of Arizona have been divided, and in their division the non-Indian use of water has continued and expanded. I might be able to say to you that theoretically under the Winters Doctrine and the law of Arizona v. California, the Navajo Tribe is entitled to nine million acre-feet of water, and this might be a fair and accurate estimate. But no way in our lifetimes, or in the future, can we see the Navajo Tribe ever getting what it is entitled to. Neither can we see the other Indian tribes of Arizona obtaining the full measure that the application of the appropriate law would provide.

Thus, the Indian tribes of Arizona must salvage what they can. Yes, salvage. The rights that we may talk about in a panel or discuss in an article on water law, the theoretical rights of Indians are not the relevant rights. The relevant rights are, what can the Indians of Arizona obtain? And the answer seems to be, very little.

So the next question is, how do the Indians of Arizona obtain the little that is left to them now? The basic strategy of those who have been able to take water rights away from Indians has been to divide the community of Arizona by preying upon the needs of individual tribes by at times dealing directly with tribal leaders and by flattery, money or whatever it would take. The non-Indian water users and their representatives have been able to set tribe against tribe and create the impression that the individual interests of Indian Tribes far outweigh the interests of Indian Tribes united. This is not an original thought. As early as 1795, Blue Jacket, a Shawnee chief, upon the signing of the Greenville Treaty, said, "Now we are weak and many of our people are afraid. But hear me: a single twig breaks, but the bundle of twigs is strong."

Thus, I would suggest to you that the first order of business is to establish an Arizona Indian Project. This project would be controlled by all the Indian Tribes of Arizona and all the Indian Tribes of Arizona would be members.

The functions of this project would be twofold. First, to quantify and establish, as a matter of law, Indian water rights in the State of Arizona. Second, to provide (as the Central Arizona Project and other non-Indian water projects have provided) for a method of allocation and delivery of this water to where it is needed by the Indian Tribes of Arizona. Lawyers use a phrase, "Time is of the essence," and this is a particularly appropriate phrase with reference to Indian water rights. Every day that goes by without a quantification of Indian water rights means a diminishing of these rights.

Participation in an Arizona Indian Project will mean that tribes will have to put aside long-standing differenees. Participation in this type of project will mean that each tribe will have to give up its capacity to make decisions on an individual basis, at least with respect to water rights. Sovereignty of individual Indian tribes had done little in the way of producing Indian water. So it would be seen that nothing of any meaningful nature would be given up. Remember that seven states signed the Colorado River Compact and five states signed the Upper Colorado River Basin Compact, obviously because the subject of water rights was just too cumbersome and too unmanageable to handle by each of the individual states. But think what an Arizona Indian Project can do and what it will mean with respect to Indian water. All the Indian tribes, once and for all, might be able to get their water rights quantified, and after the quantification there would exist a framework in which the Indian tribes themselves could then determine what to do with the water.

Here in the West, and in Arizona specifically, the doctrine of appropriation of water requires a beneficial use in order to perfect rights to water. While we do not believe that this doctrine applies to Indian water rights, nonetheless, an Arizona Indian Project can readily develop beneficial uses so that no objection could be made when the inevitable litigation is brought.

The road ahead, even assuming that there is an agreement on an Arizona Indian Project, will not be easy. The Sirens of the users of your water will sing even louder knowing that you are united. But this does not mean that the Sirens must be heeded. If the Indian tribes and nations of Arizona can recognize that in working together, despite what must be given up, there are far greater benefits to be achieved, then the future of Indian Tribes in Arizona (and not only with respect to water) is pretty well assured. Without such cooperation, without a willingness to concede a certain amount of sovereignty, without a willingness to concede selfish tribal interests (and I do not use the word "selfish" in any bad sense), the future is quite obvious. The Indian tribes will be divided by the non-Indian water users, and the water will eventually be lost. It seems likely, in the long run, that a commission similar to the Land Claims Commission will be set up to provide you with money instead of water. The nice thing about money is that there is an unending supply that comes off the printing press of the Federal Treasury. Water cannot be produced from a Federal Treasury, any state government, or by anyone except Mother Nature, who supplied an ample amount for the original inhabitants of the Southwest. This balance of nature has been severely upset by the migration of people like myself in unending hordes from the East. The balance of nature will never be restored with dollars, but your legal claims to water rights can be substantially silenced by dollars.

You know what conditions are like on your reservations, you know what percent of your reservations have running water, what percent of your people have even the most basic water supplies that are taken for granted by non-Indian water users. The time has come to stop being unhappy about the swimming pools of Phoenix and Tucson, the flood irrigation method of watering lawns that is practiced in Phoenix, and do something about it. In order to do something about it, action must take place, and the best way to act in these circumstances is to act together.

In both the Indian and non-Indian worlds there is a long history of bitter enemies putting aside their quarrels to support a common cause. This is precisely what needs to be done here.

Soft words and vague promises will not solve the water problems of the Indian people of the State of Arizona. Action will.

WES STEINER - STATE WATER COMMISSION:

I very much appreciate your invitation to attend this conference and the opportunity it affords me to learn your views on the important subject of Indian water rights.

The Arizona Water Commission, which I serve as Executive Director, is the state agency responsible for the collection of basic data on our water resources and uses, for state-wide water planning, for watershed management coordination, for surveillance of the safety of dams and for the licensing of weather modification projects. We are primarily a planning agency charged with developing plans and recommendations concerning the development and wise use of surface and groundwaters of the state, including Arizona's entitlement in the Colorado River. This planning effort includes a new and sizeable effort in flood control planning. While the Commission has a very real interest in water rights (all of our water planning is done in such a manner as to respect existing rights), we have no responsibilities in administration of water rights for special expertise in water right's law.

The responsibilities for water rights administration rest with the State Land Commissioner, Mr. Andrew Bettwy, who will address you later in your program. Mr. Bettwy's water right administration responsibilities extend to all waters of the state except those of the lower Colorado River. In the case of the Lower Colorado River the United States Supreme Court, in Arizona v. California, found that Congress in enacting the Boulder Canyon Project Act established the Secretary of the Interior as the Water Master of the Lower Colorado and that no rights to divert or use waters of the Lower Colorado exist in the absence of a contract with the Secretary of the Interior. The Arizona Water Commission is charged by law with protecting Arizona's rights in international and interstate rivers including the Colorado River. In this regard, we are coordinating the use of Colorado River waters with the Secretary, and are very actively involved at this time in this role as it relates to allocation of Arizona's remaining lower basin entitlement in the Colorado River. It is this role and the relationship of contracts for Central Arizona Project water to decreed rights of the Indian reservations along the Lower Colorado River that I would like to concentrate on today.

In the proceedings before the United States Supreme Court in Arizona v. California, the United States asserted claims to waters in the main river and in some of the tributaries for use on Indian reservations, national forests, recreational and wildlife areas and other government lands and works. These claims were based upon interpretation of the Winter's Doctrine and were confirmed and established in law on that basis by the Supreme Court in its decree in Arizona v. California in March of 1964. The court concluded that when the reservations were established by the Congress or by Executive Order, that not only the lands were being reserved for the Indians but also the waters necessary to make those lands habitable. The special master in his report to the supreme court concluded: "The amount of water reserved for the five reservations, and the water rights created thereby, are measured by the water needed for agricultural, stock and related domestic purposes. The reservations of water were made for the purpose of enabling the Indians to develop a viable agricultural economy; other uses, such as those for industry, which might consume substantially more water than agricultural uses, were not contemplated at the time the reservations were created. Indeed, the United States asks only for enough water to satisfy future agriculture and related uses. This does not necessarily mean, however, that water reserved for Indian reservations may not be used for purposes other than agricultural and related uses. The question of change in the character of use is not before me. I hold only that the amount of water reserved, and hence the magnitude of the water rights created is determined by agricultural and related requirements, since when the water was reserved that was the purpose of the reservation."

On this basis the court decreed to the five Indian reservations on the Colorado River downstream from Lake Mead sufficient water to irrigate all irrigable lands on the reservation with a priority as of the dates of establishment of the reservation or the transfer of lands to the reservation. Rights of the five tribes total 905,496 acre feet per year in terms of the quantity that may be diverted or a consumptive use on 136,636 acres, whichever is the lesser, for irrigation and satisfaction of related uses on the reservations. Priorities for these uses date from 1865 to 1917. These rights then are amongst the oldesr or most senior on the river and I cannot conceive of a water supply situation prevailing in which any of these rights would be required to share in a shortage.

Of the 905,496 acre foot per year of diversion right of the five reservations, 717,148 acre feet belong to the Colorado River Indian Reservation, 122,648 to the Fort Mohave Reservation, 51,616 to the Yuma Reservation, 11,340 to the Chemehuevi Reservation and 2,744 to the Cocopah Reservation.

Of the total of 905,496, 786,240 acre feet per year is a right attaching to lands within the State of Arizona and constitutes a part of Arizona's claim and entitlement to the waters of the mainstream of the Colorado River. The balance of the 905,000 is a claim against the entitlements of the States of California and Nevada. All of the decreed rights of the Indian reservations within the State of Arizona enjoy a very enviable seniority status. As I have previously indicated, it is inconceivable that these senior rights could ever be adversely affected by shortages in the natural supply of the Colorado River or by future developments either upstream or downstream in the Colorado River basin.

The contractual rights that will be created with completion of the Central Arizona Project and the additional contracts that will be entered into to support development along the Colorado River in Arizona will be junior to the Indian rights by approximately 100 years. The Indian rights are senior to and are buffered by contractual rights of the irrigation districts in the Yuma area, Lake Havasu City, Kingman and the Fort Mohave Irrigation District. The CAP rights will be dried up first and then the contract rights just cited before present perfected rights and the decreed rights of the reservations would be affected. It won't happen. The present perfected rights and decreed rights must be met first. As I've already indicated, decreed rights in Arizona and California total 905,496 acre feet per year. It is antitipated that other present perfected rights in Arizona and California will amount to 3,156,000 acre feet, most of it junior to the Indian rights. The total of these priority rights is 4,062,000 acre feet per year. Certainly no one in his right mind would forecast that the supply of the Colorado to Arizona and California would ever be that short.

The decreed rights of the Lower Colorado River Indian Reservations are the law of the land and can only be changed by a future decision of the supreme court. It is inconceivable to me that such an event would ever occur. I know of no one who has so much as thought of undertaking such an action and certainly it is not the intention of the state administration that construction of the Central Arizona Project or any other development in Arizona or elsewhere in the basin would be permitted to jeopardize the rights of the Indians. We support full development and use of the decreed rights by the Indians. The Governor of Arizona has in recent years testified before the appropriations committees of Congress in support of appropriations to expedite that development.

The studies that were presented to the Congress in support of the Central Arizona Project and all water supply studies made subsequent thereto by agencies of the United States or of the State of Arizona have recognized the rights of the Lower Colorado River Indian Tribes. All estimates of the water supply that will be available for diversion in the Central Arizona Project have been based on the assumption that decreed rights on all reservations except the Fort Mohave Reservation will be fully developed and utilized prior to the completion of the Central Arizona Project. In the case of the Fort Mohave Reservation we have assumed that full utilization would be effected by the year 1990. We have made a great many water supply studies and in none of them have shortages occurred in any of the decreed rights of the reservations.

While claims were entered in Arizona v. California for rights of the reservations situated upstream from Boulder Dam, the supreme court declined to adjudicate these claims. It is of interest to note that none of the claims made for the reservations above Lake Mead were made against waters of the mainstream. All were filed against the waters of springs and tributaries arising on the reservations. No one to my knowledge contests the rights of the reservations to such waters.

Arizona's entitlement in the upper basin of the Colorado River for that portion of our State draining into the Colorado River above Lee Ferry is limited to 50,000 acre feet of depletion by the Upper Colorado River Compact. Most of the Upper Basin portion of the State of Arizona lies within the boundaries of the Navajo Indian Reservation. Uses of this entitlement occur either on the reservation or under agreement with the reservation.

The five interior reservations in central Arizona, the Fort McDowell, Salt River, Gila, Papago and Ak-Chin Reservations have requested contract rights for Central Arizona Project water from the Secretary of the Interior. It is my understanding that the Department of Interior has under active consideration the decision as to the magnitude of these rights and will be announcing its decision in the near future. It is also my understanding that these rights and the CAP contract rights of non-Indians will be equal in priority. The contract rights for a water supply for municipal and indistrial uses whether Indian or non-Indian will take priority over agricultural rights in the event of shortage. As I have previously stated, rights created under the Central Arizona Project will be junior to all rights in existence on the Colorado River prior to September 30, 1968, the date on which the Act authorizing the Central Arizona Project became law.

There is no way that CAP uses can legally interfere with the senior rights including the decreed rights of the Indians. It cannot happen - it will not happen.

Thank you for this opportunity to meet with you.

LEON COOK'S SPEECH WILL BE DELETED DUE TO INABILITY TO SECURE COPY OF REMARKS.

ROGER ERNST - CENTRAL ARIZONA CONSERVATION DISTRICT:

It gives me great pleasure to be with you today to report on the completion of the National Water Commission's assignment.

The Commission's report and recommendations were submitted simultaneously to the President of the United States, to the President of the Senate, and to the Speaker of the House of Representatives on June 14, 1973. A copy of the proposed report has been delivered to the Water Resources Council as required by the provisions of the National Water Commission Act.

The legislative history and background leading to the establishment of the National Water Commission are well known. The Commission was established by act of September 26, 1968 (82 Stat. 868, 42 U.S.C. 1962a note), to consider ways of meeting U.S. water requirements in the future, including more efficient use of water, reduction of water pollution, interbasin transfers, and the use of various technological advances such as weather modification and desalinization; to consider economic, social and esthetic consequences of water resources development; and to advise on such specific water resources matters as may be referred by the President and the Water Resources Council, and to submit reports on its studies to the President and the Congress.

The seven man commission was to terminate not later than September 26, 1973.

The members of the Commission were appointed in October, 1968, and the Commission opened its office on December 30, 1968. In the period since then, just under 4½ years, the Commission held 54 meetings, met at least once with representatives of all the agencies of the Federal government having responsibilities in the field of water resources, held a series of regional conferences at which State and local governmental organizations and individuals expressed their views as to desirable future water policies, and undertook a series of background studies covering almost all aspects of water policy. While most of its meetings were held in the Washington, D. C. area, the Commission made field inspections in the Tennessee Valley area, in the lower Mississippi River and Louisiana coastal area, in Arizona and Northern Mexico, in Los Angeles, on the high plains of Texas, and in the Delaware River basin.

Sixty-one background studies were published and made available for public discussion and comment during the course of the Commission's work. Almost 25 thousand copies of these reports were distributed. Several of them were subsequently published commercially, with the Commission's permission. The two final background studies, Summary-digests of State and Federal law and programs dealing with water, have just recently been published and are on sale by the Government Printing Office.

Last November the Commission circulated copies of the draft of its proposed report for review, and held a series of public conferences earlier this year, for discussion of the report. In eight days, the Commission heard or received testimony from 399 witnesses. During the 90-day review period several thousand communications with comments on the report were received in the Commission's office.

On the basis of all the information and background developed, assimilated, and digested by the Commission and its staff during thousands of man-days of effort, the Commission presents its report and findings to the President and Congress.

One of the Commission's major premises, documented throughout the course of the studies, is that there will be enough water to meet essential demands in the future but not enough to waste. Water is not really different from other natural resources, except that it is more essential than many others. Water should be considered as an economic resource and water users that receive an economic return based on their use of water should expect to pay the full cost of providing service. The Commission believes that the Federal Government has a most important role to play in providing a climate for water development by others and in protecting the environment, but that many basic water resources functions can be handled by State and local governments and nongovernmental entities rather than by placing more and more reliance on the Federal government which has been the trend in recent years.

Seven basic themes are expressed throughout the report and provide a foundation for the Commission's conclusions and recommendations. These can be briefly stated as follows:

1. The demands for water in the future are not predetermined, but depend largely on policy decisions that can be controlled by society.

2. Future water programs should shift emphasis from water development to preservation and enhancement of water quality.

3. Planning for water development must be linked to planning for water quality and coordinated with land use planning.

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4. More efficient use of water in agriculture, industry, and for domestic and municipal purposes is essential to reduce waste.

5. Sound economic principles must be adopted to encourage better use of water resources. The Commission considers consumer willingness to pay to be the most reliable economic indicator of proper water use, if it is coordinated with government regulation of environmental protection.

6. Updated laws and legal institutions are needed if future water policies are to be successfully implemented.

7. Development, management, and protection of water resources should be controlled by the level of government (Federal, State, local, or regional) that is closest to specific problems and capable of fairly representing all interests involved.

Almost one-fourth of the Commission's recommendations concern land and water planning and interrelationships among various aspects of water resources programs.

Another 20 percent of the recommendations deal with changes in legal systems that regulate and control use of water. These are addressed primarily to State governments and include improvements in state laws relating to management of ground and surface waters, changes in state laws to recognize more of the social values in water, improvement of procedures for recording and transfer of water rights, and development of permit systems for regulating water use under riparian water law in the Eastern States. The Commission also recommends a proposed Federal Statute to reduce conflicts between Federal and State systems of water law, a subject which has been before the Congress for almost 20 years.

The Commission also recommends quantification and adjudication of Indian Water Rights, Federal assistance to Indian tribes for water development, and provision of substitute supplies or compensation to non-Indian water users who were unaware that their water supply was subject to prior use by Indians.

The report describes the need for action to provide better information and data and more research and development for programs that deal with water pollution control, flood damage prevention, domestic water standards, efficient use of existing water supplies, and increasing water availability.

The Commission did not emphasize organization changes within the Federal structure since the President's Council on Executive Organization (The Ash Council) had preempted this field in its recommendations to the President. The Commission does, however, suggest that the Federal Water Resources Council be the focal point for an expanded water resource planning effort. It is also recommended that the data gathering and analysis functions of the National Oceanic and Atmospheric Administration and the U.S. Geological Survey be combined.

The Commission recommends Government water research and development programs be merged in a new Office of Water Technology, based on amalgamation of the Office of Saline Water's desalting program, Bureau of

Reclamation's geothermal steam and precipitation modification programs, and various other Federal water research and development programs, including the research grant programs of the Office of Water Resources Research.

Under the Commission's recommendations the programs of the water development agencies, the Corps of Engineers of the Department of the Army, the Bureau of Reclamation in the Department of the Interior, and the Soil Conservation Service in the Department of Agriculture would be limited to those projects and functions which exceed the capability of State, local, and nongovernmental entities. Total Federal expenditures will, under these recommendations, be greatly increased by the additional expenditures which will be required for water quality control.

In offering its recommendations for change, the Commission recognizes the significant role that Federal agencies and programs have played and will continue to play in the American economy. But the Commission believes that as the demands for water approach the upper limits of an essentially fixed supply, it is necessary that the people of the Nation, through their representatives in Congress, look at proposed but unauthorized Federal water programs. These programs involve expenditures of over $4 billion in the budget for Fiscal Year 1974. The Commission suggests replacing outmoded and timeworn policies with new ones aimed at meeting the water needs of the future, not the past.

Some of the recommendations in the report are addressed to the President, some of the Congress, and others to various Federal and State agencies or to the water industry and the public generally. The Commission hopes that the recommendations will be used by those seeking improvements in policy and procedures as a basis for future legislative and administrative action at all levels of Government and throughout the water industry.

The Commission completed its work within the time and the budget allocation provided in the National Water Commission Act. Although the five year life of the Commission does not terminate under the Act until September 26, 1973, the Commission was successful in completing its work by the end of the last fiscal year without requesting funds for the almost three months of the present fiscal year. It was the decision of the Commissioners at the outset that no time or dollar additions beyond those designated in the Act would be requested. During the course of the work it was obvious the interest, complexity and scope of the assignment could easily develop into many many years of work and study in order to do justice to all facets of the water world. As is obvious in the report greater time and detail could have been spent on some subjects, however, the Commission and Staff were determined to do the best they could within the given time. I assure you although some of the numerous recommendations made are presently controversial, there was no attempt to develop comprehensive conclusinns after much study and debate by the members, staff, panels, and all interested parties who chose to participate.

HAROLD RANQUIST - U. S. SOLICITOR'S OFFICE (WASHINGTON):

(Revised Fact Sheet) Indian Rights to the use of water -- claimed and exercised -- are predicated upon the principles first enunciated by the Supreme Court in a 1908 Case (Winters vs. United States) which arose on the Fort Belknap Indian Reservation in Montana along the Milk River, a tributary of the Missouri River. Those principles as applied and amplified by subsequent decisions are the basis for the proposition that there is an implied reservation of rights to the use of water by and for the Indians in the springs, streams, lakes or other sources of water which arise upon, border, or traverse their lands. Water was reserved from use and appropriation by others as of the date of the creation of the Reservation whether created by Treaty, Executive Order or Statute. These Winters Doctrine Rights to the use of water may be used to satisfy the future as well as the present needs of Indian reservations.

In the past the quantity of water reserved under the Winters Doctrine has been measured in terms of agricultural and domestic needs. However, the United States has recently filed a series of cases to determine if, in fulfillment of the purposes of the Federal sovereign, the Doctrine includes other uses such as the maintenance of a lake for recreational purposes; minimum stream flows to preserve fisheries and satisfy other ecological needs; and water necessary for the production of minerals on reservation lands.

Indian rights to the use of water are private, not public in character; therefore, they cannot be administered as are rights to the use of water owned by the Nation and exercised for the benefit of the public as a whole. Today in many locations Indians and non-Indians are in acute competition for a water supply inadequate to meet all demands. The extent of Indian water rights, is , however, largely undetermined.

Rights to the use of water are part and parcel of the land itself. The right to use is what is owned by the Indians or anyone else who has title to the right to take water. Being interests in real property, Winters Doctrine Rights to the use of water pass to non-Indians when the lands to which they are part and parcel are transferred. Lessees of Indian lands may exercise the water rights appurtenant to the leased lands.

On October 4, 1971, the Secretary of the Interior announced the establishment of an Indian Water Rights Office. It directs all aspects of the Department effort to assert and protect the water rights of American Indians for whom the United States is trustee. It has in the past year, in the performance of its functions, undertaken 15 major cases in the United States Supreme Court, in Federal District Courts, and before the Federal Power Commission.

An imperative first step in the protection of the Indian property was considered to be an inventory of the potential land and water uses on Indian reservations. The Indian Water Rights Office has established and is now in the process of implementing a plan for the inventory of such land water uses for both present and future Indian waterneeds for all purposes. Along with the inventories, confirmation of the rights will be accomplished by administrative action or by court adjudication.

Indians want an accelerated water resource development program paralleling the program to quantify water supply and requirements so that Indians can utilize that invaluable natural resource in making their reservations viable economic communities.

(Current Status Of Cases In Litigation) United States for and on behalf of the Pyramid Lake Paiute Tribe of Indians v. The States of California and Nevada.

This was a suit asking the United States Supreme Court to establish that sufficient water was reserved from the Truckee River to maintain Pyramid Lake and its fishery and to establish other Federal reserved water rights in the watershed. The States of California and Nevada opposed the Supreme Court undertaking the case urging that it should be tried in the Federal District Courts of the State of Nevada. The Native American Rights Fund, Robert Pelcyger Attorney, and Association on American Indian Affairs, Arthur Lazarus, Jr., Attorney, filed briefs in support of our position. The Supreme Court heard oral argument recently on the issue of whether it should take jurisdiction or should it send the case out to the Federal Courts in the State of Nevada. The court refused to take jurisdiction and the Department of Justice will file the same suit in the Nevada Federal District Court around September 1, 1973.

United States for and on behalf of the Southern Ute and Ute Mountain Indian Tribes v. Akin.

This suit was filed at the request of the tribes in Federal District Court in the State of Colorado to adjudicate the water rights of their reservations along with other Federal reserved water rights in the San Juan River watershed in the State of Colorado. One of the issues is whether water was reserved for the purpose of the development of coal deposits on these reservations. Water districts in the State of Colorado have intervened and sought to have the case dismissed. They want to require adjudication of the Indian's water rights in state court. The court first denied their motion but thus granted a motion for reconsideration. The federal judge ordered the parties to proceed with the preparation of the case for preliminary pre-trial in Federal District Court by May 29, 1973. We are asserting that the Eagle County decision does not apply to Indian reserved water rights. On July 20, 1973, the court dismissed the Government's complaint. It decided to abstain from exercising its jurisdiction. The Judge decided to refuse to handle the stream adjudication and held that State courts could and should adjudicate all Federal water rights including the Indians reserved water right. The Department of Justice, at our request, has moved for reconsideration of that ruling. We claim that the Indian's reserved right is unique. It is based upon the treaties and statutes of the United States and is the subject of the Federal trust relationship. Therefore, the state courts cannot adjudicate the Indian's water rights. Federal courts must do so. The Native American Rights Fund representing itself and the National Tribal Chairman's Association has filed a brief as a friend of the court. They support our position. If the judge does not reverse his ruling we will appeal to the 10th Circuit Court of Appeals then to the United States Supreme Court if necessary.

The United States v. Bel Bay Community Company.

This is a suit to prevent the pumping by non-Indians, owners of formerly allotted lands on the Lummi Indian Reservation, pursuant to the authority of permits obtained from the State of Washington. Those permits encroach upon water reserved for the benefit of Indian lands. The Secretary of the Interior is asserting that he has exclusive jurisdiction to control and administer the diversions of water reserved for the benefit of tribal allotted and formerly allotted lands of that reservation. Proposed regulations are being discussed with the Tribes and their attorneys which will assist in resolving the case.

United States v. Barbara J. Anderson, et al.

This is a suit to adjudicate the right of the Spokane Tribe in the State of Washington to reserve sufficient water to meet present and future water needs and to maintain minimum streamflows in Chamokane Creek to protect the environment for fish, game and wildlife. This is the first case in which the right to maintain minimum streamflows under the Winters Doctrine has been asserted. A stipulation was entered into last summer which protected the minimum streamflows. The court is ruling on who must be parties to the case and pre-trial is expected soon.

Northern Pueblo Cases in the State of New Mexico.

Five cases have been consolidated into one in which the United States has intervened to assert the water rights of the San Juan, San Ildenfonso, Santa Clara, Nambe, and Tesuque Pueblos in the Rio Grande watershed. We are urging that the reserved right doctrine is applicable to the Pueblos in order to secure their present and future water needs. Claims are made under the Winters Doctrine and under Spanish law pursuant to the treaty of Guadalupe Hidalgo. These cases will provide a precedent for establishing aboriginal rights and extending the Winters Doctrine to the water rights of the Middle Rio Grande Pueblos despite restrictive legislation.

United States v. J. Ed Smith, et al.

This is a suit to set a precedent which will prevent the pumping from the underflow of the Gila River in Safford County, Arizona. The pumping activities of farmers in that area are reducing the flow of the Gila River and depriving the San Carlos Apache and Pima Maricopa Indian Communities of water reserved for their use and benefit. Pre-trial is set for this spring. The pumping and diversion out of the watershed by the defendant has been stopped.

United States for and on behalf of Colville Indian Reservation v. Walton, et al.

This suit filed in March 1973, will protect the water rights of the Colville Tribe to a small stream on its reservation. The issue is the exclusive authority of the Secretary of the Interior to administer and control water reserved for the benefit of tribal, allotted and formerly allotted lands. We are seeking an injunction against the State of Washington preventing them from issuing water permits interfering with the use of water on such lands. The suit has just been filed and we are waiting the defendant's answer. Proposed regulations regulating diversions by non-Indians and providing for distribution among the Indians are being discussed with the tribes.

Western Shoshone Indian Reservation (Duck Valley) v. Application of Riddle Ranches for a Storage Reservoir.

This was an action before the Idaho Water Resources Board opposing an application to construct another reservoir on an adjoining ranch. After a hearing the Idaho Water Resources Board ruled in favor of the Indian water right and made the right of the ranch subject thereto. The construction of the reservoir has been stopped. An inventory of all the water needs and the hydrology of the Owyhee River and Blue Creek is being conducted for the purpose of establishing the measure of the Indian right for the entire reservation.

United States v. Escondido Mutual Water Company and Vista Irrigation District; and FPC Project No. 176, San Luis Rey Watershed, San Diego, California.

This is a series of cases to protect the water rights of five Mission Indian Bands and to recover damages for trespass and the breach of certain water rights contracts held by the defendants. Diversions from the San Luis Rey watershed by the defendants are interferring with the water rights of the La Jolla, Rincon, Pala, and Pauma Indian Bands. We are seeking to establish a water right for the San Pasqual Indian Reservation out of a canal that transports water from the river to the City of Escondido under the Mission Relief Act. This a companion case to the complaint of the Secretary of the Interior before the Federal Power Commission in Project No. 176.

In order to prevent diversion of the water out of the watershed and other activities which are inconsistent with the purposes for which the Indian reservations were created, the Department of the Interior has requested the FPC to recommend that the United States recapture the land and facilities involved in FPC Project 176 including the Escondido Canal. The Indian tribes have requested the issuance of a non-power license permitting them to operate the Canal and its facilities for their benefit. The FPC will hold a hearing on these issues September 19, 1973, in San Diego County, California.

The United States in the suits before the Federal District Court asked the Court to require the Mutual Water Company and Vista Irrigation District to supply the Indian reservations with sufficient water to meet their needs pending the decree of the court. That request was denied by the Court during June 1973. An early trial will be set.

The Department of the Interior has requested the FPC to impose additional conditions upon the Mutual Water Company preventing it from transporting water through the Escondido conduit for the Vista Irrigation District without first obtaining the approval of the Department of the Interior and for other conditions designed to protect the Indians' land and water rights.

Chippewa Flowage FPC Project No. 108.

The Department has requested recapture of the Indian lands used in this project in order to recover the use and benefit of those lands for the tribe and to protect the wilderness characteristics of the area.

FPC hearings in Wisconsin were held during the week of August 13, 1973. More hearings will be held later in Washington, D. C. One of the issues is whether the FPC can grant a new license if the tribe refuses to permit the use of their lands pursuant to the Indian Reorganization Act.

CLIFFORD PUGH - U. S. DEPARTMENT OF RECLAMATION:

When I received an invitation to participate in this conference on Indian water rights, I thought a mistake had been made because I am not a lawyer and have no qualifications whatever for discussing water right law of any kind. However, I was assured that you desired to obtain administrative and technical inputs to this conference, as well as legal inputs.

In my remarks which follow, I will therefore attempt to review and summarize those significant happenings over the past 10 years which bear directly on the matter of rights to the use of water by Indians in the Lower Colorado River Basin and which provide the guidelines and rules governing the activities of engineers, planners, and administrators in the field of water resource development in the Lower Basin. These remarks will be directed particularly to the impact of these rights on the Central Arizona Project, or the impact of the Central Arizona Project on Indian water rights--whichever way you may view it. To do so, I will have to quote verbatim from the Supreme Court Decree, the Colorado River Basin Project Act, and other pertinent legal documents in order that I will not be guilty of making legal interpretations for which I am not qualified.

I hope that, by referring to specific quotations from some of the basic legal documents which comprise so-called "law of the river," I can provide you an insight into the intense involvement of engineers, administrators, and other non-legal types in Indian water rights which may be helpful to the Indian community.

I. Supreme Court Decree, Arizona v. California (1963)

A. General

The basic right to the use of waters upon Indian Reservations arises out of the United States' contention that, when it created the various Indian Reservations, or added to them, the United States reserved for the Indians not only the land but also implied to reserve the use of enough water to satisfy the purpose of the reserved land.

With regard to the Lower Colorado River Basin, the United States, as intervenor in the case of Arizona v. California, argued that it had reserved water flowing in the Colorado River and its tributaries in the Lower Basin for the needs of all of the Indian Reservations located within the Lower Basin. Therefore, "... the United States claims that each Indian Reservation has the right to divert and consume the amount of water necessary to irrigate all irrigable acreage on the Reservation and to satisfy related needs, subject only to the priority of appropriative rights established before a particular Reservation was created and water reserved for its benefit." 1/

1/ Report of Special Mater Simon H. Rifkind, Arizona v. California December 5, 1960, page 254 their lands would have been useless. Winters has been followed by this Court as recently as 1939 in United States v. Powers, 305 U.S. 527. We follow it now and agree that the United States did reserve the water rights for the Indians effective as of the time the Indian Reservations were created. This means, as the Master held, that these water rights, having vested before the (Boulder Canyon Project) Act was passed in 1929, are 'present perfected rights' and as such are entitled to priority under the Act." 1/ So spoke the Supreme Court.

B. Mainstream Indians

The Court went on to establish the priority and magnitude of the water rights reserved for the five lower mainstream reservations for the purpose of enabling the Indians to develop a viable agricultural economy.

The amounts of water so decreed to the mainstream Indian Reservations are as follows, and are cited directly from the decree:

1. "The Chemehuevi Indian Reservation in annual quantities not to exceed (i) 11,340 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 1,900 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of February 2, 1907;

2. The Cocopah Indian Reservation in annual quantities not to exceed (i) 2,744 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 431 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of September 27, 1917;

3. The Yuma Indian Reservation in annual quantities not to exceed (i) 51,616 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 7,743 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of January 9, 1884;

4. The Colorado River Indian Reservation in annual quantities not to exceed (i) 717,148 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,588 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of March 3, 1865, for lands reserved by the Act of March 3, 1865 (13 Stat. 541,559); November 22, 1873, for lands reserved by the Executive Order of said date; November 16,1874, for lands reserved by the Executive Order of said date, except as later modified; May 15, 1876, for lands reserved by the Executive Order of said date; November 22, 1915, for lands reserved by the Executive Order of said date;

1/ Opinion of the Supreme Court of the United States, No. 8, Original--October Term, 1962. State of Arizona v. State of California et al., June 3, 1963, pages 49-50.

5. The Fort Mohave Indian Reservation in annual quantities not to exceed (i) 122,648 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 18,974 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, and, subject to the next succeeding proviso, with priority dates of September 18, 1890, for lands transferred by the Executive Order of said date; February 2, 1911, for lands reserved by the Executive Order of said date; provided, however, that lands conveyed to the State of California pursuant to the Swamp and Overflowed lands Act (9 Stat. 519 -1850-) as well as any accretions thereto to which the owners of such land may be entitled, and lands patented to the Southern Pacific Railroad pursuant to the Act of July 27, 1866 (14 Stat. 292) shall not be included as irrigable acreage within the Reservation and that the above specified diversion requirement shall be reduced by 6.4 acre feet per acre of such land that is irrigable; provided that the quantities fixed in this paragraph and paragraph (4) shall be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined;..."[1]

The above rights total in excess of 900,000 acre-feet per year of potential diversions from the Lower Colorado River, decreed in full by the Supreme Court as "present perfected rights." As such, these rights are afforded the full protection and recourse of the "law of the river."

Each of these mainstream water rights are senior in time and in claim to those of the Central Arizona Project, and, as such, the administration and distribution of mainstream waters must and will be made in light of that fact. In recognition of this, all past and present studies of Colorado River water available to the Central Arizona Project have first deducted the full amount of projected development of mainstream Indian rights before assessing the remaining Arizona entitlement which might accrue to the Project. Over the years, and in consultation with the Bureau of Indian Affairs, Reclamation has repeatedly reviewed and updated its estimates of the rates of development of the various mainstream Indian Reservations, and determined its residual water supply accordingly.

C. Other than Mainstream Indian Reservations

As concerns all other Indian Reservations in the Lower Colorado River Basin, that is, those situated on tributaries to the Colorado River, the Supreme Court ruled that the case of Arizona v. California was an inappropriate time to apportion water in any Colorado River Tributary except the Gila River.

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[1] Supreme Court of the United States, No. 8, Original, State of Arizona v. State of California et al., Decree--March 9, 1964, II(d) (1)-(5).

Of the ten Indian Reservations within the Gila River Basin, the Court took no action on seven of these, all of which are located entirely within the State of Arizona. They are the Ak-Chin (Maricopa), Camp Verde, Fort Apache, Fort McDowell, Papago, Salt River, and San Xavier Indian Reservations. Court action was not deemed necessary or helpful in order to make the Gila River apportionment between Arizona and New Mexico, and it was not considered expedient in this case to adjudicate such "purely local claims." 1/

Of the remaining three reservations for which claims were made to the Supreme Court for rights to water from the Gila River proper, the Court found that two, the San Carlos and Gila River Indian Reservations, were represented and governed by the Gila Decree (Globe Equity No. 59). Lastly, claims to Gila River water on behalf of the Gila Bend Indian Reservation against New Mexico users were rejected by the Court. Similar claims against Arizona users were not determined by reason of the local, intrastate nature of the claims.

So much for the Supreme Court Decree. The next major action of significance which I will discuss today is the Colorado River Basin Project Act, Public Law 90-537, dated September 1968, and related actions.

II. Colorado River Basin Project Act

In authorizing the Central Arizona Project in P.L. 90-537 the Congress of the United States dealt specifically with several matters of direct concern to the Gila River Basin Indian tribes. In addition to providing for the protection and restoration of Indian lands as may be needed for the Orme Dam and Reservoir, a number of significant benefits were made available by the Act to the Indian tribes. These benefits are perhaps best summarized by the Secretary of the Interior in his notice of approval of the master water contract with the Central Arizona Water Conservation District, as published in the Federal Register of December 20, 1972.

"Office of the Secretary
CENTRAL ARIZONA PROJECT,
ARIZONA

Water-Use Priorities and Allocation
of Irrigation Water

Pursuant to the authority vested in the Secretary of the Interior by the Act of June 17, 1902, as amended (32 Stat. 388; 43 U.S.C. 391 et seq.) and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885; 43 U.S.C. 1501 et seq.), the following decisions will apply in determining the priorities for water use and the allocation of irrigation water between Indian reservation lands, and non-Indian lands within the Central Arizona Project. In arriving at these decisions many interrelated facets have been carefully considered.

1/ Report of Special Master Simon H. Rifkind, Arizona v. California, December 5, 1960, page 332.

A number of significant benefits are available under the Colorado River Basin Project Act only to the Indian tribes, such as:

1. Reservation Indians have the prerogative to use project water to irrigate lands not having a recent history of irrigation.

2. Project costs allocated to Indian lands which are beyond the repayment capability of such lands are nonreimbursable. In addition, costs within repayment capability are deferred pursuant to the Leavitt Act (Act of July 1, 1932; 25 U.S.C. 386a).

3. Indian communities located in the vicinity of Orme Dam are to be given special relocation benefits and the right to develop and operate recreational facilities along the part of the reservoir located adjacent to Indian reservations.

In addition to the above, generally prevailing acreage limitations of reclamation law are not applicable to the delivery and use of project water on Indian lands.

In addition to the legislative benefits applicable only to the Indians, there are other special benefits which by administrative discretion may be accorded to the reservation Indians as follows:

1. Delivery of project waterneed not be offset equivalently by diminished ground water pumping.

2. Project water may be delivered either to developed lands or to new lands without restrictions on ground water pumping.

3. In times of water shortage, and to the extent of the Secretary's rulemaking authority, all entities receiving project water under contracts or other agreements with the Secretary may be required to make a showing satisfactory to the Secretary that appropriate water conservation measures have been adopted.

4. The allocation of project irrigation water to Indian lands may be relatively higher than that assigned to non-Indian lands.

After careful review of all interrelated factors affecting Indian and non-Indian lands and evaluation of the comparative benefits allowed by law, and in recognition of my trust responsibility, I hereby conclude and announce the following interrelated decisions:

1. Delivery of project irrigation water to Indian lands will not be required to be offset by diminishing ground water pumping.

2. Project irrigation water may be delivered either to developed lands or to new lands with no restriction on increasing ground water pumping in either or both areas to firm up irrigation water supply in times of shortage, so long as all such activities take place within established reservation boundaries.

3. In the allocation of project irrigation water Indian land shall receive a relative advantage over non-Indian land, the percentage of project water allocated to Indian lands to be determined by the Secretary.

4. All contracts and other arrangements for Central Arizona Project water shall contain provisions that in the event of shortages, deliveries shall be reduced pro rata until exhausted, first for all miscellaneous uses and next for all Central Arizona Project agricultural uses, before water furnished for municipal and industrial uses is reduced.

5. In times of water shortages the Secretary will exercise his rulemaking authority to require assurances satisfactory to him that appropriate water conservation measures have been adopted by project water using entities.

In accordance with the decisions set forth herein, the contract with the Central Arizona Water Conservation District has been approved.

ROGERS C. B. MORTON,
Secretary of the Interior

December 15, 1972."

Since the passage of the Colorado River Basin Project Act, five Indian tribes have filed expressions of interest in obtaining water from the Central Arizona Project. It should be obvious from the foregoing that every effort is being made on behalf of the Arizona Indian tribes in implementing the Central Arizona Project to protect their property and interests and to enhance their water resources.

JOHN ECHOHAWK - NATIVE AMERICAN RIGHTS FUND:

As most of the tribal leaders here know already, Native American Rights Fund is a privately funded Indian interest law firm representing tribes, groups and individuals in cases of major significance where they cannot afford to retain counsel. We have 14 lawyers working out of our headquarters at Boulder, Colorado, and one attorney in our Washington, D. C. office.

We are involved in four Indian Water Rights cases, all of which were discussed previously by Mr. Ranquist of the Solicitor's Office. We are representing the Pyramid Lake Paiute Tribe of Nevada in their efforts to secure their water rights in order to maintain the level of Pyramid Lake. We work with government attorneys in asking the Supreme court to decide the issue in United States v. Nevada and California, but as Mr. Ranquist reported, the Supreme Court has decided not to hear the case. We are now working with the government attorneys as they prepare to file suit on the question in the Nevada Federal Court. One aspect to the Pyramid Lake controversy which Mr. Ranquist did not mention was the suit that the Pyramid Lake Tribe successfully brought against the Secretary of Interior to revise his regulations concerning the amount of water which could be taken out of the river which feeds Pyramid Lake for the benefit of a reclamation project. Last fall the federal court in Washington, D. C. held that the Secretary's regulations allowed too much water to be taken out of the river and ordered the Secretary to lower that figure, thus allowing more water to flow down into the lake. That decision, however, did not establish a water right for the tribe, which now must be done in the federal courts in Nevada and California.

Mr. Ranquist also mentioned the litigation in Southern California along the San Luis Rey River. We represent several bands of Mission Indians involved in that case who are seeking to regain their water rights from utility companies who have been using the water for many years illegally. Although there have been some disagreements, our position and that of the government are basically the same.

We are also co-counsel to the Lac Courte Oreilles Band of Chippewas in Wisconsin in their battle to prevent the Federal Power Commission from renewing a power license for facilities on the reservation operated for the past fifty years by Northern States Power Company. The basic issue here, of course, is tribal control over the use of reservation lands.

The other matter in which we are involved, as Mr. Ranquist mentioned, is the case of United States v. Aiken in the federal court at Denver. The issue in the case, of course, is whether the state courts have jurisdiction to adjudicate Indian water rights. NARF has appeared in the case as amicus curiae in its own behalf and representing the National Tribal Chairmans Association strongly arguing against state jurisdiction. We feel this is a case which will affect many tribes and recommend that you keep informed on the progress of this case.

Although I share some of the skepticism expressed by Lee Cook earlier, I do not believe we can stand idly by while the non-Indians take the last of our water resources. There are tremendous practical and political pressures against us but we must be prepared to fight. I am personally pleased to see the federal government taking a stronger stand as trustee of Indian resources over the past few years. The President himself has acknowledged this obligation and has recognized the problems created by the conflict of interest which the government often has in these cases. Although I don't think enough has been done, some steps have been taken by the government to minimize this conflict and I think we are starting to get some good results.

In discussing what should be done about Indian water rights, we must look at the reasons for this meeting. Indian water rights have been established since the Winters decision in 1908 and they are generally first priority rights. Why, then, are we concerned if we have the first priority rights? It is because the non-Indian who is competing for water will not recognize those rights unless they are adjudicated and incorporated in a court decree which is enforceable. Although some of the tribes have adjudicated water rights, many of your tribes do not.

Water needs should be inventoried, using future needs as an outside limit. The right to use water for all present and future needs should be adjudicated and put into a court decree in most instances. With water rights secure, tribes should then seek funds to be able to utilize their water right to maximum extent. This three-step process of inventory, adjudication and development is basically the strategy that has been pursued by the Office of Indian Water Rights since its formation.

The strategy of inventory, adjudication and development is also a basic strategy encompassed in the National Water Commission Report. In this respect, the report is good. All is lost, however, if recommendation number 6 of the National Water Commission is adopted. As we pointed out earlier, it would call on the federal government to provide development monies so tribes could use their water rights. It would also require the federal government to reimburse non-Indians who were put out of business when Indians started using their water and cutting off people with lesser rights. This would require the government to pay twice for an Indian water project and assuredly would lead no where. Congress just isn't going to fund any Indian water projects because they will also have to pay off the non-Indians who will be put out of business. Also, as was mentioned earlier, National Water Commission recommendation number 4 would allow states to initiate water adjudications by suing tribes. This is a dangerous waiver of tribal sovereign immunity and might catch many tribes unprepared to go into court and adjudicate their rights.

In summary, then, tribes must move to adjudicate their water rights where they are controversy and must fight against the adoption of the National Water Commission's recommendation number 6 and part of number 4.

We have been talking very abstractly about the concept of Indian water rights, but what does it mean to the people on the reservation? By developing their water resources to the fullest, tribes will be increasing the economic base for reservation. With more agriculture and industry, there will be more income and jobs. When we talk about water rights, then, we are talking about increasing the standard of living of our people. And this, of course, is our most important priority.

ANDREW BETTWY, SR. - STATE LAND DEPARTMENT:

Chairman West Anderson, Mr. Fred Banashley, and Mr. Clinton Pattea, it is a pleasure to be here and I thank you for the opportunity that you have given me and other people to present some comments on the water problems, I was particularly impressed by the manner in which everyone stood to honor and courtesously recognize Governor Jack Williams. I have now listened to people who hold high honorable positions within their tribes and I hope it is not inappropriate for me to ask the non-Indians in this room if they would stand and join with me in recognizing those leaders in the same manner in which they recognized Governor Williams. I have been impressed with the sophisticated presentations that have been made here by the Indian leaders. The Indians are not oblivious to the water problems, but to the contrary they have a very high level of knowledge of the situation, and I hope that this will bring about the cooperation and approach needed for solution of problems that face us both.

I no doubt will use the word "Indian" and "non-Indian" many times but I want you to know that I do have some appreciation for the problems that those classifications ignore. Regardless of the words I might use we are really talking about Americans -- those whose ancestry on this land is pre-Columbian and those whose ancestry traceable to lands across the ocean. As a lawyer it is important to qualify what I might say with the predicate that you should not accept what I say as a basis for any of you to either claim rights or to abandon them.

The New York Bar statement on this point is clear: "A lawyer who writes a speech for the purpose of educating members of the public to recognize their legal problems should carefully restrain from giving or appearing to give a general solution applicable to all apparently similar individual problems since slight changes in fact situations may require a material variance in the applicable advice. Otherwise the public may be mislead and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein."

I came here to talk to you a little bit about what Arizona does within the areas of water that the state controls. For the purpose of my presentation I think that the people beginning is to start with this provision from the Arizona Constitution.

Article 20, Para. 4, of the Arizona Constitution provides as follows: "The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and (this is a portion I think is most important) to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any private sovereignty, and that, until the title of such Indians or Indian tribes shall have been extinguished, the same shall be and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States." Clearly what is Indian, and I am not here to make claims regarding your lands. My presentation is made in the vein of a statement made in the Pacific Southwest Water Plan of 1963 which in part in it preamble states as follows: The Pacific Southwest is now at the crisi point in meeting its growing demands for water." Also stating that we need a Plan it continues: "It requires new concepts of land and water management. It requires a new spirit of cooperation and coordination among the diverse federal, state and local interests. It requires water statesmanship of the highest order. Indeed either we will prosper together, or we shall shrivel separately."

People have talked about the spaceship concept and I have no doubt that we in Arizona are on the spaceship earth and occupying a small compartment of it. Many more people are crowding into that compartment and they are coming from other compartments within that spaceship, as well as from our own population growth and it is not practical for us to have no concern over the limited resources within that compartment what it must be used for a happy and enjoyable journey.

The Winters doctrine has raised many questions and in my mind created problems. I don't intend to go into that subject, except to state that in my opinion, it is at the heart of the water problems that must be resolved. Some people have suggested, particularly some who live in Arizona, that perhaps the only way to solve the problems over water will be for the entir state and all of its people to be declared an Indian reservation. Repealin this is not to be, but it does lend to put the subject in the proper context of a limited resource needed by everyone. If the Winters doctrine were applied to its fullest sense, according to the most general interpretation, there is not enough water in the total Colorado River watershed to satisfy even the requirements and the potential of the Hopi-Navajo lands that exist within the State of Arizona. With the total Colorado River water applied to lands on the Hopi-Navajo Indian Reservation, only about 15% of the land could be farmed.

The excellent job that the Arizona Commission of Indian Affairs has done in preparing background material and which has been handed to you gives a good general picture of how a state under the Doctrine of prior appropriations handles this subject, and I won't go into it in any detail, however, I do want to say that Arizona operates under the Doctrine of prior appropriations.

Not all of the waters in Arizona are subject to this rule. Only those defined in the law can be appropriated. Generally, lakes, streams, springs and water flowing into fine channels whether on the surface or sub-surface are appropriable. All of the rest of naturally occuring waters and principally all of the groundwaters in Arizona are unregulated except for agriculture in some areas.

The significance of these laws is that Arizona laws do attempt to control and regulate water among the people users. It may be that the waters on Indian land should also be regulated in terms of priorities among Indian users, particularly should this be a subject of concern, if the day is to be anticipated when Indian reservations concepts are terminated and the lands are divided among the Indian owners.

Regulation among users in Arizona has one important underpinning and foundation: That is the concept of beneficial use, stated another way, the concept is, that the water cannot be used wastefully.

It would seem to me that whatever water rights there are to Indian lands these rights are also limited to beneficial use and are also restricte against wasteful use.

Let me say this another way, non-Indian lands have a right in my opinion to stop waste of water on Indian lands. If that be true then the reverse must also be true and that is that Indian lands have a right to see that there is no waste on non-Indian lands. The spaceship concept requires these conclusions in my opinion.

Arizona has two opportunities to prevent waste. At the very inception it can refuse a permit if the proposed use is not beneficial to the public. Once having issued a permit, the state appears to have the authority to enjoin or stop waste of groundwater, and it can also determine that a permit is invalid if the waste is equivalent to abandonment of the beneficial purpose.

You may ask, "What is waste?" My definition of waste is a use at a given time that doesn't benefit the community. In every situation each case must stand on its own two feet.

Recently, I have taken unusual action in both areas. I refused a permit to the Arizona Game & Fish for a lake in the Tucson area on the basis that the use would create another burden for waste in an area that already is in a considerable and severe overdraft situation. The applicants in that case have taken this case on appeal to the superior court in Tucson, and we will see what the courts down there think about this approach to water management.

I have also taken the position that waste may occur in the use of water for aesthetic fountains or artificial lakes and I have asked the Attorney General in both of these cases to bring action to determine whether or not the statutory duty upon the Land Commissioner to prevent waste includes these types of uses.

People who have said, if the use of water for aesthetic fountains and for artificial lakes is wasteful then how about use of water for swimming pools, golf courses, cemeteries, the front yards and even farming? These are valued questions.

My answers are that I know of no law that guarantees these uses under every condition. A realistic view is that all uses must be considered in their time and in their place.

Arizona for all intents and purposes does not control her groundwater except for agricultural uses where particular areas have been designated as critical groundwater areas.

In the area of this subject, I asked the last Arizona Legislature to make all groundwater appropriable. This is a highly complex subject and I did not expect that to be accepted without perhaps several years of study and maybe not even then. However, if this concept were to be applied it would give the state control over all uses of groundwater. That law was not passed, and I have asked for the same thing to be reconsidered this year. Several other states like Oklahoma recently passed just such a law, and I have no doubt that if we are to make the best use of our water and to be able to plan where and when it will be used we must have sovereign authority over groundwater.

In addition to the foregoing, I asked the Legislature last year to pass a law permitting the registration of old water rights. The history of Arizona is such that prior to 1919 all one had to do to acquire a water right was to physically take possession of it and put it to beneficial use. Since there was no requirement for recording or central registration, many of the rights in Arizona are without written documentation. The problem in this area is the same for Indians and for non-Indians. Indians can appropriate non-Indian water in Arizona. However, it would appear that the converse for the non-Indian is not true.

I have also asked the Legislature to consider stronger controls over and more clarity in the laws relating to waste of water. The definition and classification of the word "waste" would be most useful administratively and would promote prompt and decisive application of the law to prevent misuse of the water.

I hope my contribution here will be to help avoid talking in terms of Indian rights and non-Indian rights but rather to help direct our thinking towards how we can best use the water that is available for the highest benefit to everyone.

There is no question that this requires statesmanship of the highest order, unselfishness and application of true responsibility.

Before I leave you with any idea that the non-Indian is doing everything right and that the Indian is doing everything wrong, permit me to draw a parallel between the hogan and the modern house. The hogan with its dirt roof destroys not one inch of the natural earth surface. The cliffdweller does not either. The dweller on the barren Mesa does not destroy the farm. The non-Indian has a very poor record where one compares his land use to that.

We cannot polarize ourselves into two simple camps of Indians and non-Indians. The differences among Indian reservations and their needs and futures are themselves so complex as to be equal to those among all men and they must be resolved also.

May I leave you with one thought. As I grew up there was a phrase that we used called "Indian-giver" which had sort of a generalized meaning--referring to a person who gave something and then after having given it, took it away. While thinking about the Indians recently in preparation to coming here today, I came to the conclusion that the phrase had nothing to do with an Indian unless it was as the one who received the gift.

Thank you again very much for having invited me.

HONORABLE BEN HANLEY'S SPEECH WILL BE DELETED DUE TO OUR INABILITY TO SECURE A COPY OF HIS REMARKS.

JAMES GOFF - STATE HEALTH DEPARTMENT (WATER QUALITY):

The Arizona State Legislature in regular session in 1967 passed ARS 36-1865 Jurisdiction Over Indian Lands, which reads:

> "The legislature of the State of Arizona has determined and it is hereby declared that the prevention and abatement of water pollution is a matter of statewide concern and the provisions of law relating to water pollution control should apply to all persons and all lands located within the state. Therefore, the provisions of law relating to water pollution control shall be applicable to all lands within the state, including, but not limited to, Indian tribal lands, reservations and allotments, and pursuant to the provisions of Public Law 280 (67 Stat. 588, 590) jurisdiction is hereby expressly assumed by the State of Arizpna with respect to enforcement of laws relating to water pollution control and the State of Arizona and its political subdivisions shall have jurisdiction with respect to criminal offenses and civil causes of action arising from the enforcement of laws relating to water pollution control on all Indian tribal lands, reservations and allotments. Any duly authorized agent of the state or any political subdivision thereof may enter upon any public or private lands, including Indian lands, for the purpose of enforcing the laws relating to water pollution control."

The Department in the past has monitored water quality of surface waters on Indian land. Examples of these are Salt River and its tributaries Gila River and San Carlos River.

This monitoring was to assure compliance with Water Quality Standards for Surface Waters adopted by the Arizona State Water Quality Control Council. These standards were promulgated for the prevention, control and abatement of pollution. These were designed to protect the beneficial uses of surface water such as domestic, industrial, agricultural, recreational, fish and wild life.

The Department has worked with the Tribes in obtaining U.S. Environmental Protection Agency grants for the construction of wastewater treatment facilities. We are looking at future construction fund needs on reservations--especially as tribes take over functions presently done by B.I.A. and P.H.S.

EPA CONSTRUCTION GRANTS TO INDIAN TRIBES

Tribe	Project	Amount	Year
Navajo Tribal Utility Authority	Window Rock	$1,299,900	1972
Navajo Tribal Utility Authority	Tsaile	138,750	1971
Colorado River Indian Tribe	Parker	347,520	1972
Navajo Tribal Utility Authority	Tuba City	152,710	1972
Navajo Tribal Utility Authority	Chinle	132,000	1970
White Mountain Apache	McNary	46,060	1969

The Department consults with B.I.A. and the Indian Public Health Service in the design and construction of water and sewer projects. The Department has also consulted with these agencies on operational problems of water and sewage systems.

The Department is developing Water Quality Management Plans for the nine river basins within the State. These plans will indicate areas that need sewer systems, degree of treatment required to meet stream standards, alternative plant sites, etc. In each basin the planning is directed by a steering committee. White Mountain and San Carlos Tribes have been asked to be represented on the Salt River Steering Committee. The Navajo and Hopi will be asked to serve on the Little Colorado when it is formed. There will be other steering committees formed in the future and tribal representation will be requested.

DR. RICHARD KASSANDER, ONE OF THE DINNER SPEAKERS HAS REQUESTED THAT HIS SPEECH BE DELETED FROM THE REPORT AS IT WAS NOT DIRECTLY RELATED TO THE CONFERENCE SUBJECT.

JACK PETERSON - KEYNOTE DINNER SPEAKER:

I appear before you here tonight billed as an "Indian Water Resource and Water Rights Specialist." It would be more appropriate to be billed as a "Full-blood Swede" educated, trained and experienced in water resources economics, planning and management, and water rights. As many of you know, I work full-time in resolving and trouble-shooting Indian water resources and water rights problems.

I would like to be clear from the outset that I am a private sector consultant-advocate and that I am here tonight presenting only my personal views and observations, including recommendations to the conference. I do not represent any given Indian tribe or region during my remarks which follow.

As anyone who has worked for any substantial time in the field of Indian water resources and water rights knows, it is virtually impossible to discuss the subject without "mixing it up" -- that is to say without combining the disciplies of law, economics and engineering. I will not attempt to practice law or engineering here tonight even though I will touch on legal and engineering issues.

What I am going to attempt to do to the best of my ability tonight is to put into perspective the initial avalanche of information that has almost buried you here today by dealing with the most relevant and most critical issues.

The past three months have seemed more like three years in the advocacy of Indian water rights. Never before has there been such a concentrated series of aggressive threats to Indian water rights and tribal sovereignty emanating from both the bureaucracy and the courts.

Conversely, and paradoxically, never before have we had a Congress that has been more receptive and more sensitive to tribal needs, and to the demand for well-thought programs for the restoration, planning and development of Indian natural resources.

However, effective advocacy requires diligence and skill. Because there is such an incredible lack of specialists in the fields of Indian water rights and Indian natural resource development, present professional manpower resources -- Indian and non-Indian -- have been both overtaxed and overexerted. The onrushing tide of threats to your resources has been checked during the past three months only out of the sheer dedication and tenacity of tribal leaders and their scarce advocates. This first Arizona Indian Town Hall Meeting on Indian Water Rights is a prime example and a major step in the right direction. It is vital that Indian tribes throughout Arizona and throughout the West unite. Only then can water and natural resource problems be thoroughly reviewed and analyzed; and only then can concrete proposals, solutions and/or demands be presented effectively to both the Administration and the Congress, which together with the judiciary comprise the trustee of you, the Indian people.

Before getting on with specific vital issues I would like to iterate and then reiterate something which I believe in strongly myself and which I believe is important to the success of this conference: Complaints without rational alternatives are not enough. Again: Complaints without rational alternatives are not enough!

The Congress is asking for substantive, rational and well-thought recommendations and alternatives from Indian country. You have the opportunity, here, during the in-depth panel discussions tomorrow to accomplish something productive -- to formulate well-thought alternatives to the present faltering system of protecting and developing Indian water resources and water rights.

SUBSTANCE

The specific actions recently endangering Indian water rights which I will focus on t night are: 1) The current court case referred to as U.S. vs. Akin involving the Ute Mountain and Southern Ute Tribes in the State of Colorado; 2) The final report of the National Water Commission, especially Chapter 14, Indian Water Rights; and 3) Proposed regulations drafted by the Interior Department for the Control of Water within the boundaries of Indian reservations.

With each of the foregoing I will offer you recommendations and alternatives for your deliberations tomorrow.

A. United States vs. Akin Discussion: In late 1972 the United States Government, acting as Trustee and at the request of the Ute Mountain and Southern Ute Tribes, filed suit in the Federal District Court in the State of Colorado to have adjudicated both Indian and Federal water rights in the river basins in southern Colorado in the proximity of the reservations. This suit was intended to determine Indian and federal water rights on one hand, and private or state water rights on the other. It followed on the heels of the now infamous Eagle County Case which also took place in Colorado.

The U. S. v. Akin case was heard before Judge Finesilver who ruled on June 21, 1973 that the Federal District Court was "abstaining" from the case and he then "dismissed" the case. Motions for reconsideration were submitted with regard to this decision by both the Justice Department, and by the Native American Rights Fund and National Tribal Chairmans' Association acting jointly as amicus curiae. The motions were denied and the case is now pending appeal.

According to Harold Ranquist, Senior Attorney, Solicitor's Office, Department of the Interior, this decision could be calamitous to Indian water rights throughout the West. Its implications are that Indian water cases in the future could be heard or tried in state rather than federal courts. By abstaining from and dismissingU.S. vs. Akin from the Federal District Court Judge Finesilver returned it to the Colorado State Courts for jurisdiction.

Recommendations: 1) That all Indian tribes in the West closely follow the U.S. vs. Akin case; 2) That Western Indian Tribes individually or jointly file amicus curiae briefs supporting the Utes if it is appealed; 3) That regional and national Indian organizations file amicus curiae briefs; 4) That Indian tribes and Indian organizations express to the Solicitor's Office and Justice Department the need for careful, thoroughgoing consideration of the implications of the decision, and whether or not it should be appealed. (There are those who contend that Colorado is not the place for such an appeal.)

B. The Final Report of the National Water Commission, "Water Policies for the future," especially Chapter 14, Indian Water Rights.

On June 28, 1973 the National Water Commission delivered its final report to the Senate Subcommittee on Water, Power and Energy Resources. The report contained a new chapter, -- Chapter 14 Indian Water Rights.

This new Chapter was the result of vigorous opposition by Indian tribes to the original draft of the report which, in Chapter 13, had mixed state, federal and Indian water rights. The opposition by tribes was voiced in hearings held in Spokane, Albuquerque and Washington, D. C. earlier this year. As a result of tribal opposition to Chapter 13, Chapter 14 was drafted.

While the new Chapter does present a concise history of the Winters Doctrine and Indian Water Rights it also presents recommendations which are clearly detrimental to Indian interests if they are acted on by the Administration and/or the Congress.

Recommendations: 1) That all tribal leaders here tonight read and carefully consider Chapter 14. If needed, call upon your water resource specialist or attorney to assist you; 2) If you are dissatisfied, specify which parts of the report are unsatisfactory and write to your Congressional delegation and to the Administration; 3) My personal recommendation, after carefully reviewing the report is that an entirely new minority view be written by a united Indian country, entitled, "Chapter 14, Indian Water Rights from the Indian Perspective."

C. Proposed Regulations for the Control of Water on Indian Reservations.

Discussion: The proposed regulations were first unveiled at an Indian water rights seminar at the Yakima Nation in Toppanish, Washington June 12, 1973. They were distributed by Mr. Hans Walker, Assistant Associate Solicitor for Indian Affairs and had been drafted by Mr. Harold Ranquist, Senior Attorney in that office. Copies of the proposed regulations, which were drafted by the Solicitor's Office at the urging of and with pressure from tribal attorneys and tribes in the Northwest, according to the Solicitor's Office, have subsequently been distributed throughout Indian country.

The major complaints about the regulations are that they vest in the Secretary, Area Directors and Agency Superintendents nearly all the jurisdiction with regard to water regulations; and that they grant equal treatment to any person -- Indian or non-Indian -- residing within the boundaries of a reservation with regard to water distribution and water rights.

Recommendations: 1) That each tribal leader here carefully review the proposed regulations, even though they were initially intended for only the Portland area; 2) That after careful review a critique be filed by each tribe and national Indian organization with the Solicitor's Office; and, finally 3) That some tribe and/or Indian advocacy group working with a tribe draft an alternative set of regulations which are then reviewed, approved and endorsed by the Secretary of Interior, his Solicitor and the Commission of Indian Affairs.

In closing I again reiterate: Complaints without rational alternatives are not enough. Let's go to work united tomorrow and initiate a program for the protection and development of Indian Water Resources and Water Rights in Arizona.

Note: On September 24, 1973 Mr. Peterson incorporated a firm in Boise, Idaho dealing solely with Indian tribes. The firm, Jack G. Peterson and Associates, Inc., specializes in natural resource management, water resource planning, regional economic analysis and economic development.

REPORT ON PANEL DISCUSSIONS AS SUMMARIZED BY ANDY BETTWY, JR., LEON BEENE, AND TONY MACHUKAY (PANEL RECORDERS):

During the second day of the Indian Water Rights Confere,ce three separate workshops were held. A panel discussion outline was provided by conference sponsors to guide workshop objectives. Below is a compilation of the issues that were discussed at these meetings as interpreted by assigned reporters:

The first question asked was, "From what source is Indian Water Rights (derived)?" The unanimous opinion was that such rights were derived from the concept of sovereignty and secondarily from treaties, codes, and water laws. However, it was emphasized that the Federal Sovereign as Trustee, rather than tribal sovereignties, should be responsible for protecting the water rights of Indian people, even if it entails recognizing the aboriginal rights of the various tribes.

It was not readily determined what was meant by "status quo" in the second question, which was: "Should the status quo of Indian water rights be maintained? If not, should the goals be progressive integration in some or many fields of modern Arizona life?" All three panels agreed that since many tribes were still being denied their water rights, and others had not asserted theirs, the status quo in these cases certainly should not be maintained. On the other hand, development of Indian lands should be accelerated if tribal water rights are to be utilized and protected.

The third question presented was, "What do the Arizona Indian tribes want as a broad objective in terms of water rights?" The response was that the tribes want full development of their lands through use of surface and ground waters to which Arizona Indian tribes are entitled. Additionally, it was pointed out that Indian tribes should be allowed an indefinite period of time to develop their lands without losing their water rights. Another broad objective discussed was that Indians do recognize the need to maintain water quality standards.

The fourth question raised among participants of the three workshops was, "How best can the distinctive water rights of Arizona Indian tribes be preserved in light of today's developments?" Various answers to this question were presented, some of which are itemized below:

1. Quantify tribal water rights by having water inventories made on Indian reservations.

2. Unify issues, band together, and demand federal support and funds for protection of Indian water rights.

3. Develop and utilize existing water sources immediately for reservation developments.

4. Obtain legal aid and pursue court cases which will establish and enforce Indian water rights by court decree or by agreement whenever possible. With regard to agreements, it was contended that Indians do occupy an unequal bargaining position and for this reason, attempts should be made to reach agreements rather than pursue court litigation, since there are many unnecessary risks and uncertainties involved.

5. Initiate and support state and federal legislation which will protect Indian water rights.

To the question, "Should we accept the principles that the Indian should or will always be the responsibility of some level of government, or should and can tribal governments stand on their own eventually?" One answer offered was that the tribes should determine their own water rights claims. Another idea expressed was that tribal governments should stand on their own once financial stability is attained and maintained, with the federal government still available in a supporting role for trusteeship purposes or protective responsibilities, but not for day-to-day management services. However, there was concern and questions raised with respect to the capability of some tribal governments to assume full managerial responsibilities of tribal resources, since it has been observed that Arizona tribes are at different levels of preparedness.

The sixth question posed was "Is there a continuing need for the Bureau of Indian Affairs or other federal agencies? Should the tribal governments assume administrative authority over services presently handled and performed by B.I.A.?" Some thoughts enunciated were that tribes should begin to regulate and assume administrative authority over their own programs and formulate policies regarding certain B.I.A. services, but that B.I.A. technical assistance should be continued -- all without an abrupt changeover.

To the seventh question presented, the answer was overwhelming NO, the Federal government should not turn over to state, county and local governments, its responsibilities in the field of water resources.

The eighth question was, "In what areas of our political, economic, social, and cultural life can other Arizonans be most helpful to the Indian citizens?" This was answered simply with the suggestion that non-Indians should support politically, Indian programs and encourage Indian participation in state and local affairs.

The next question considered of how Indians can become involved further in decision-making processes in state affairs regarding social and economic areas. Some answers offered were: a) by having Indians elected and appointed to decision-making positions in government and b) by better utilization of the Commission of Indian Affairs. It was emphasized that through participation in state and local affairs, Indians can gain opportunities to publicize their concerns and desires, and at the same time promote better understanding between Indians and non-Indians. It was also stressed that non-Indians have a duty to facilitate the participation of Indians in local affairs.

The tenth question posed for discussion was, "If there is further integration of Indians into various phases of our society, does it imply depletion of Indian resources?" Only one clear reply was forthcoming from workshop participants in response to this question; the response was that YES, such integration does imply depletion of Indian resources, but only if with integration, there follows diminished recognition of tribal sovereignty.

Another segment of each workshop discussion dealt with the legal status of Indian water rights on a national basis. In this part of the discussion outline, nine questions were presented. A report of the opinions stated and issues raised are given below:

The first question was "Does the Winter's Doctrine protect or will it eventually destroy Indian water rights? Conference members in two of the workshops agreed that given a broad interpretation and applied beyond limitations of irrigation purposes only, the Winter's Doctrine can be an instrument for protecting Indian water rights.

To the second question "Will the National Water Commission's recommendation weaken Indian water rights?" The unanimous opinion among participants was YES, since the report had lacked Indian input and could weaken Indian water rights if the language in the report is taken literally by Congress. One workshop group recommended that "No study be accepted on Indian water rights without Indian input and acceptance of the document."

The third question discussed was "Is the Eagle River decision a detriment to Indian water rights?" In accord and without qualifying the answer, the unanimous response to this question was, YES, the Eagle River decision is a detriment to Indian water rights.

The fourth question asked was "Should there be legal or statutory limitations placed on groundwater pumping?" Most participants agreed that with respect to tribal sovereignty, powers to enforce legal or statutory limitations should not be vested in the state, and that no limitations on reservation ground water pumpage should be prescribed without the express approval of the tribal government affected. However, it was recognized by workshop members that considering the limited water resources throughout Arizona and Indian reservations, limitation standards are needed and should be imposed where applicable.

For question number five which asked "Since Indian water rights are guaranteed by the courts and by law, in practical terms, do we find this true?" The most vocal response was negative in that historical facts confirmed this general assumption to be untrue, mainly because the Federal government had failed to live up to its trust responsibilities in protecting Indian water rights and because Indians themselves had not taken steps to enforce such rights through the courts.

"Should there be a moratorium on reclamation projects which affect Indian water rights and land?" was the next question posed. The opinion expressed by the majority was YES, there should be a moratorium on reclamation projects which affect Indian lands and water rights, especially when Indian rights are not fully protected and when Indian people affected, are not consulted and do not approve such projects.

THE HONORABLE ARTHUR HUBBARD - SENATOR:

It is my priviledge and honor to say a few words--mostly comments and observations.

In my few years working with Indians and non-Indians several things have come to my attention. One of the biggest complaints the Indians have is that the Bureau of Indian Affairs through some hundred and more years that they have worked with the Indians, have developed programs and started implementation of these programs without any input from the Indians. This, I am sure, is true. It is only in the past five to ten years that that this type of program development for the Indians has begun to take a change. It is this change that I feel is of greatest importance to the Indian people. Yesterday, mention was made of a couple of things people thought were important, and I noticed that they tied in very much with this idea of change. As long as programs, legislation, developing programs, and appropriating money for the Indian people was carried on by Congress alone in Washington, there was no need for any action on the part of the Indian people. In fact, this type of assistance to help them to get along, only developed resistance within the Indian people wherever they might be throughout the country.

In my comments I am referring only to the people of this State of Arizona. I have had very little contact or experience with Indian people out of the State of Arizona so my expertise, whatever it might be, is mainly with the Indian people in this state. I have attended conventions all over the country and at these conventions it has always been my experience that the Indian people from one section of the country have particular problems peculiar to that section; for instance, in the Northwest everybody was excited about their fishing rights. Here in the Southwest our particular problems are peculiar to this area. It is dry country, so we are concerned about water rights. Over in the plains country in Oklahoma the Indian people are concerned about the situation they have where they have no reservation, but the Indian people live to themselves. Their problems are peculiar to their particular situation. For this reason the Indians have never been able to agree on what priorities might be as far as approaching Congress and saying, "These are the things we think you should work at." With no priorities, the Indians have never been able to develop any plans for an overall program for the Indian people so they haven't been able to go to Congress and say, "This is what should be considered first; there should be so much money to take care of this particular problem," and so on year after year. Now with the stated policy by the President that the Indian will be given his chance to develop programs himself--develop on a self-determined basis what priorities he believes there should be--provides the Indian with one of the greatest opportunities to better the situations that the little islands in the various states which we call reservations, have developed. However, this is not going to take place as long as we find Indian people, for instance, even within this State of Arizona, from one section having a problem which is a higher priority and which they are more excited about because it is one that they deal with everyday, compared with that of another section where they are not so excited about that particular problem from an area. As an example, I think one of the participants, in contrast to all the others, said they had no particular water problems when he was asked. He said, "I have no water problems."

(in referring to a small reservation with a river running right through it; so naturally he doesn't have a waterproblem.) He isn't excited about those who have the problem, but what are they excited about? They are excited about Orme Dam which is going to take a lot of their land and they won't be able to live where they are living now. Each group of people on a particular reservation has problems peculiar to that reservation.

I don't believe that just coming together like this is going to produce the necessary unity that the Indian people are going to need to attack or take advantage of the situation as it is now where we have the chance to determine what our own priorities are going to be, what problems we are going to attack first and what plans we are going to use to attack these various problems. I would like to suggest to you, chairman of the different tribal councils that are here and you council members that are attending this conference, and other Indian people who are here, that in the State of Arizona we need to develop a closer understanding of what each others problems are so the Inter-Tribal Council, which supposedly represents the reservations in this state, will have the clout that it is supposed to have.

Education is a two-way street whether it is Indian, among Indians, or Indian with non-Indian. When it comes to the Indian dealing with the non-Indian, the Indian has to present his position as clearly as possible so that the non-Indian who has never experienced living on the reservation will be able to understand it and appreciate the problem as it is. Indian problems, unfortunately, present the unique situations. Arizona has the greatest number of reservations or reservations which comprise the greatest amount of land in this state; something like 27% of the State of Arizona is Indian reservation. The non-Indian portion which produces taxation to run this state is only like 26%. What is the balance then? They are federal controlled lands: national parks, national forests, national monuments, military reservations and public domains. They are not tax-producing. This state has some of the most unique problems in the country. It is separate from all the 50 states of the country because of this situation. How is it going to take care of this situation? There has to be close cooperation between the Indian people living on the reservations and the non-Indian wherever they may be living. Like I said, there has to be a two-way street in this education process. The non-Indian learning about the Indian to appreciate his peculiar problems and the Indian learning vice versa about the non-Indian situation and the problems that he is exposed to.

The Bureau of Indian Affairs has been a hundred and some years with the Indian schools in the country; but, as of the present, at Navajo Community College, students coming from high schools of the B.I.A., are turning up with about a seventh grade reading capability. Students coming from public schools are coming in with about ninth grade reading capability. Students from private schools, missions of the various denominations, are coming more within the twelfth grade range of reading ability. This along with other situations that are developing on reservations, to me, indicate that there is a trend from Indian children attending the Bureau of Indian Affairs' schools to that of the public schools. One reason why children are going more to public schools is that they have a chance to stay at home where they are in contact with their parents longer than if they go away to a boarding school. Another reason is that parents are beginning to realize that they must give some direction to a child for a longer period of time than they have been. You can't give schools the responsibility of training your child with characteristics of being responsible, having respect of law, and other people's property, or other individuals. These are things that have to be acquired by the child from his parents. You don't delegate that to a school because their responsibility is that of imparting knowledge to the individual. These are some things that Indian parents are becoming aware of, so they keep the child at home more in order to instill in them the types of character that they would like to see. These developments, although they are small changes, indicate a trend. What is happening? We are developing a tremendous problem. The schools that are public schools are being located on Indian reservations. There are five high schools on the Navajo Reservation. There is one high school on the White Mountain Reservation. There is one high school on the Papago Reservation. These are all funded by and constructed by Federal funds which were given to the state to build these facilities. As to the operation and maintenance of these facilities, money is not available to operate them. The areas the schools are located in are not taxed, so this problem of having money on hand to repay expenses becomes one of a big headache.

The Navajo people themselves go to Washington; they argue with those officials for money; they bring back a small amount. People from the county schools go to Washington; they bring back another small amount. If people from the state education office go to Washington, they bring back another small amount. Why couldn't all three different groups of people get together and go at one time to Washington and bring back a greater amount of money to take care of these situations? This type of cooperation I do not see, and it is one that needs to be developed. The Indian, at the present time, enjoys great recognition in the offices of the Washington area in Washington, D. C. The people right next door in the city hall of the towns along the reservations don't see our people in their offices. The people in the county seats don't see our people in their offices. We have only rapport with certain departments of the state. I am not suggesting that the reservations give up their sovereignty, but there can be a cooperative effort which would be far better than the way things are carried on now. As it is, each little reservation working within its own boundaries develops and strengthens those invisible walls which makes an island in this state. The state people in order to get their Constitution, had to write in a disclaimer in the Arizona Constitution, but that should not squelch their interest in trying to be helpful and bring about a more beneficial state to live in.

These are the things I have observed in coming into the Senate of the State of Arizona as one of the big problems which could have some solution, and would probably provide a greater source towards solving the other problems that we have, or what we call "the Indian problem" in this State. Supposedly, there is going to be a time when these reservations may no longer be. That is in the future and some distance away, but working towards that time is the period in which Indian and non-Indian must develop that atmosphere in developing an exchange of resources where there is a lack of resources on the reservation and it is available outside the reservation and can be used outside. These are the things that will help build up this State. True, the standard of values that the business world has, is diametrically opposed to that of the values that the Indian has developed. I am not sure that the Indian wants to embrace all of the business standard of values, but I do believe there can be a combination of these values; the best from the Indian and the non-Indian put together to make for a greater and stronger State in the Union. These to me, are challenges which the Indian people and the non-Indian people face: that of becoming more aware of what the peculiar problems are in regard to the federal government having total control over certain pieces of land in this State. I do hope, as time goes along, that there will be more effort on the part of the Indian people to develop an understanding between the reservations not only on the part of the officials because this usually happens. There is a certain group of tribal council members or chairmen of the councils who develop a certain amount of knowledge because of their contact with various other people, but that is where the knowledge stays. It is not disseminated to the other people. It has been my observation that this happened with the Navajo. Programs were developed in Washington and officials came from whatever particular section the program was developed. If it was an education program, the head of the program department in Washington came up to Window Rock; he talked to the tribal council and they became knowledgeable of their programs but that is where the knowledge stayed. It did not go out to the people. For some reason this never hppens. This is something the Indian people have to work at so that people in the various outreaches of the reservation become knowledgeable about administrative problems and functions--as well as those officials that are within the high offices. As to what we need to do with the Arizona state officials, we need to become aware of what their responsiblities are so that we may be able to communicate understandingly with them.

It was quite a shock to me when I first attended the sessions of the Senate to have people who talked the English language come in and talk that of educational people; then another group would come in and talk the language of the medical people. Another group would come in and talk the language of the engineering people in all shades of meanings to one word, within these various professions. This is where misunderstandings between the Indian and the non-Indian have developed; that is, this shading of words in the English language, compared to the limited words of the Indian, which have definite meaning and no other shading to it. Interpretation of the English to the Indian meant a certain thing while it, on the English part, had a different meaning depending on what the context of the sentence was. These things have caused the Indian to say, "The white man speaks with forked tongue." This type of understanding of the various little things (they seem to be little things) cause the big problems that we have.

I hope that the Indian people will develop some means of having individuals from various reservations go from reservation to reservation and explain the various operations that are going on within those areas so that we develop some kind of unity to approach the non-Indian with, and seek his help in going to Washington to develop a greater amount of effectiveness to get legislation that will allow more area for the Indian to operate in, a non-Indian to assist in, and bring about development beneficial to the reservations so that we can soon be as competitive with the business world outside the reservation.

BILL FARRISON - FEDERAL RECAP (FINAL ANALYSIS AND RECOMMENDATIONS)

Recognizing that the Indian rights for the use of water is above from the sovereign nature of Indian tribes, I issue this broad policy statement: that the tribes, in formulating programs to fully utilize their economic development potential, determine the extent of rights for the use of water, and to vigorously protect those rights. There is little dispute that the vast majority of the Indian tribes within the state are situated on lands which are aboriginal jurisdiction lands, upon which they have utilized and lived on since time immemorial but--the tribes who have been beneficially utilizing the water since ancient times, has all come out in dispute. Over a century and a half ago, the courts clearly established that the Indian tribes have rights to the use of water; their rights being an attribute of a sovereign nature of an Indian tribe, and whose rights are of such nature that are to satisfy not only the present water needs of the tribe, but also their future needs. In the arid region of the country which is Arizona, the extent of the estimated future water needs of many tribes, has not been established. I submit to the tribes for their consideration that they should individually determine the necessity or desirability of a water inventory study to be conducted on their reservations; however, the tribes should jointly urge the trustee, the federal government, to provide the funds necessary for the tribes which elect to inventory their water resources and needs to accomplish that goal. I wish to point out, however, I would question any necessity to record a given tribes present and future water rights in any state office as recommended by the National Water Commission's report to the Congress and to the White House; rather, I submit the proposal that the tribes themselves form an Indian Water Rights Office and if there is a necessity to record these rights then the right should be recorded in the Indian Office and the State may submit requests to this office to assist them in their planning of water usage within their area of jurisdiction. This leads me into the suggestion put forth yesterday by Mr. George Vlassis, general counselor for the Navajo Nation, that the Indian tribes of the State of Arizona seriously meet and consider the formation of an Arizona Indian Resources Protection Association Inc. or whatever name you want to put on it. I will tell you why I think this is necessary. Notwithstanding the attempted assurances by Mr. Ranquist from the Solicitor's Office that the Indian Water Rights division of the B.I.A. is still operable, my information from within the bureaucracy is to the contrary. At best, the placing of the Indian Water Rights division with in the office of Trust Responsibility under Mr. LaFollette Butler will result in a defusion of the effectiveness of that division being adequately able to protect Indian water rights. At worse, and I feel that this might happen, the transfer of the director of the Indian Water Rights division, Mr. Hans Walker, to the Solicitor's Office, has surrendered this division by default, and the word is that there is no desire within the Bureau of Indian Affairs to fill this slot. Secondly, the track record of the Solicitor's Office to protect Indian water rights has not been an envious one, although the recent addition to that office might provide some people a glimmer of hope for better advocacy from that office. I feel that the tribes would be ill-advised to rely upon that glimmer. Probably the best position for the tribes to take, at this time, would be to adopt the position that little or no advocacy for Indians will be forthcoming from the federal government. The third thing that I want to get into is Chapter 14, the recommendation of the National Water Commission. Although there was some concern in the meeting that we had down stairs, that this was kind of like beating a dead horse, I don't think so. I think the time is here for us to exert all of our influence with the Congress and the White House to assure that Congress will not enact into law the recommendations of the National Water Commission as it now stands. I will read to you what I got from Mr. Ranquist yesterday. Mr. Ernst stood up here before this group and presented to us his evaluation or his understanding of the National Water Commission's recommendations and he ended up by saying something to the effect that there they are fellows, I don't feel that these things are contestable, and that these are really good recommendations, and no one is really going to be able to adequately contest these. The Director of the Indian Water Rights Office "We fail to understand why the Commission in footnote No. 1 (page 473) limited the discussion of Indian water rights to the rights of Indians to the use of water from surface streams on Indian reservations. It does not discuss Indian use of ground water, Indian rights off-reservations or rights to Indian allottees. The Indians Federal Reserve Rights includes ground water, and the principals of the reserve right pertaining to it is the same as it is for the right in the surface streams. The conflict with respect to claims for the use of ground water requires solution just as much as conflicting claims to surface water; further, most ground and surface waters are part of the same hydrological cycle and changes in that the regimen of one will have a direct, though sometimes delayed, impact upon the other (a study by Charles E. Corker for the National Water Commission; Legal Study No. 6, dated October, 1971). We believe that because of the physical impact upon each other, ground and surface water must be adjudicated simultaneously in most instances. With respect to the Indian water rights outside the boundaries of Indian reservations, we believe the rights, in some cases, may extend to distant streams such as the claims of the Ute Mountains, Ute Indian Reservation, or water from the distant Delores River which was at one time part of that reservation, and is the only source of water for service to portions of that reservation. The principles of Indian water rights discussed in the Commission's report appeared as equally adjudicated to both ground water and off-reservation Indian rights. We cannot understand the exclusion of water rights of the Indian allottee from the terms in Chapter 14. The Indian allottee has the federal reserve water rights the same as any tribe and the Secretary is required to protect and preserve it, further, the General Allottment Act 25USC creating one, requires the Secretary to make a just and equal distribution of the reserve water among all the allottees and others having the right to share in the reserve waters. (The case of United States v. Powers from its non-Indian purchasers of the Indian allottment to participate in some degree in the reserve water rights that the Indian transferee held.) Incidentally the Water Commission sighted the United States v. Powers to support their position, but they sighted it incorrectly which I think Mr. Bill Veeder points out in his report. We can see no reason for excluding the allottee from the principles discussed in the report. Where the Indian allottee has not been served by Indian irrigation projects, no determination has been made as to the measure of his water rights. The inventories and general plans for the use of water rights in connection with Indian reservations must necessarily include the various allotments. These rights are part of the total reservation and are entitled to protection in appropriate courts. Recommendation 14-1 & 2: Were written by the Indian Water Rights Office. Recommendation 14-3: The Secretary is involved in the adoption of regulations for the establishment of a permit system to make an adjusted equal distribution of Indian water rights to each of the reservations. How to match the federal operation with the state's record keeping system is being resolved in connection with these regulations. We approve the concept of the recommendation needs to work out the administrative machinery to carry it out.

Recommendation No. 14-4: We approve the concept of exclusive jurisdiction of the United States District Court in actions involving Indian water rights, and accept the jurisdiction of the United States Supreme Court. We believe, however, that the United States should continue to represent the Indian tribes with respect to the adjudication of water rights even where the tribe becomes a party to the action. This Department and the Department of Justice have agreed that the tribes may intervene in this action in order to see that the rights are appropriately protected, however, the United States should continue to be responsible for the case. The cost of the burden are more than most Indian tribes can carry. Further, we believe legislation should require the states to appear and testify in those actions in which the United States seeks to adjudicate the Indians reserved rights with the provisions of any non-Indian water user with whom the state may have a conflict of interest, but should have the right of intervention.

Recommendation 14-5: The Commission's discussion appears to confuse the question of the sale of water rights with the lease and speaks of them as though they were both the same. This is not true. We support the concept that the Indians be able to lease their water rights for a limited period pending the time when they are able to put them to use on their own reservation; however, we do not believe that the Indians' trustee, Secretary of Interior, should be a party to an agreement for the outright sale of water to a third party. The basis of the water right is to fulfill the purposes of the Indian reservation. The reservation will have water rights only to the extent that water is necessary for its development. The trustee cannot be in a position of agreeing that the Indian reservation would be without water and forever a waste land even if the Indian tribe indicated that they wish to do so. The concept of getting the Indians to lease their water for a limited period of time is a sound one, but we do not understand why it is necessary to limit that right to a fully-appropriated stream. The right to lease should include any circumstance in which the Indian right is quantified, or when the amount that is supposed to be received is obviously well within the reserved right of the reservation involved. There are numerous instances that includes the use of the ground water where a proposed non-Indian user should have had the opportunity of weighing the cost of the development without the lease of the Indian water, against the cost of development using Indian water in payment of the value thereof. We wholeheartedly endorse the recommendation that Congress make financial assistance to Indian tribes available, to make economic use of their water, and to develop projects of all kinds for the development of their reservation. As stated, we approve the concept of the lease of Indian water rights; but would it extend to all ground and surface waters which clearly belongs to the Indian allottee or tribe? However, we believe that the lease period should not exceed 20 years with a negotiable renewal for an additional 20 years at the option of the tribe or Indian allottees involved

Recommendation No. 14-6: We strongly disagree with the Commission on this point. We do not agree with the Commission's statement on page 480 and 481 that in those areas in which the non-Indians have, prior to 1963, established the use on the water reserve for Indian reservations, such users have a legitimate expectation of legal protection. The attorneys and water users of the United States have been on notice since 1908 following the opinion in Winters' Doctrine, that the Indians have a reserved water right. The Commission sights that case on page 557 which states that the amount of water right would be that amount which would support the purpose of the agreement, therefore, it was known that the amount of the Indians' right would be large, though the exact measurements had not been established. We do not believe that it is just or equitable to say that the state or non-Indian water users can, as they have for 65 years, fight the very existence of the Indian water rights denying that it exists and proceed in most cases, to make use of all available supplies without regard to the amount reserved for the Indian and by that device creating a right entitled to legal protection. The example used by the Commission of the Metropolitan Water District of Southern California which spent considerable sums to divert water out of the Colorado River is an excellent example. The water district, by doing so, obtained free use of water which was decreed to be Indian water in Arizona v. California. They sell the water for prices around $60 per acre-foot per year. The district has had 40 years' free use and are claiming the right to continue to have free use, at least until the Indians develop the use for water on their reservation. We do not believe that such actions create a legally protectable right, which would require that the Water District receive compensation for the enterprise for future use of the water, before the Indians can put the water to use on their reservations. The Federal sovereignty intended that the water be reserved for the Indians. The Metropolitan Water District has simply had a windfall for 40 years, therefore, we reject the recommendation and urge strenuous compensation to correct a right as a matter of policy; this kind of decision will create a situation in which confusion, conflict and litigation will abound for no good purpose. Everyone is presumed to know the law. The law of the land that water was preserved for the benefit of the Indian reservation in substantial amounts, was established in 1908. Since that claim everyone had notice. We do not believe that there will be as much conflict between Indians and non-Indian users as applied by the Commission's report if it is accepted that it is necessary for all parties to take all possible steps to make the most efficient use of the water diverted. In conclusion, if Recommendation No. 14-6 were adopted, it would make the development of projects for the use of water on Indian reservations economically impossible. The Indians have not been able to acquire funds to develop their projects in the past without the added burden of paying the non-Indian for the value of water which has been reserved for the Indians." Signed, Mr. Hans Walker, Jr., Director, Water Rights Division Bureau. Seems to me that he is overly optimistic of the National Water Commission or Mr. Ernst to feel that Indian tribes or the people will not object to the National Water Commission's recommendations. I think that the major portion of this conference has been about the National Water Commission's recommendation and I think that primarily because these things are of such critical nature to the Indian tribes, and the recommendations if enacted as it stands, are so partial that we stand to lose our water rights today, or whenever it is enacted. The last thing that

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I want to touch upon is that I want to go on record as an individual in denouncing the Bureau of Indian Affairs for breach of their trust responsibility to the Indian tribes in the State of Arizona, when we requested assistance and expertise from them, and they denied us the personnel to come out here and advocate or put forth the Indian viewpoint as the Indian right to the use of water. I think further that in acting pursuant to the resolution which was passed by the Inter-Tribal Council of Arizona, I will recommend to the legal council of the National Congress of American Indians that they do initiate action against the Secretary of Interior, Bureau of Indian Affairs, and all people who are involved in the denial to the Indian people of Mr. Veeder and his assistance.

EMORY SEKAQUAPTEWA'S STATE RECAP WILL BE DELETED DUE TO OUR INABILITY TO SECURE A COPY OF HIS REMARKS.

CMP:WA/dd
February 6, 1974